Ṣaḥīḥ Muslim

With the Full Commentary by

Imam al-Nawawī

Translated and Edited by

Adil Salahi

VOLUME

·NINE·

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THE ISLAMIC FOUNDATION &
ICMG AUSTRALIA

Ṣaḥīḥ Muslim: With Full Commentary by Imam al-Nawawī, volume 9

First published in England by
THE ISLAMIC FOUNDATION,
Markfield Conference Centre,
Ratby Lane, Markfield,
Leicestershire, LE67 9SY,
United Kingdom
Website: www.Islamic-foundation.com
Email: publications@islamic-foundation.com

Quran House, PO Box 30611, Nairobi, Kenya

P.M.B 3193, Kano, Nigeria

Distributed by
Kube Publishing Ltd
Tel: +44 (0) 1530 249230
Website: www.kubepublishing.com

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7/882 Cooper Street,
Somerton, VIC,
Australia, 3062.

With special thank you for the immense contribution of ICMG Youth Australia.

Cataloguing-in-Publication Data is available from the British Library

ISBN: 978-0-86037-920-1 *casebound*
ISBN: 978-0-86037-925-6 *paperback*
ISBN: 978-0-86037-930-0 *ebook*

Cover Design by: Jannah Haque

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Arabic Consonants

Initial, unexpressed medial and final: ء ’

ا	a	د	d	ض	ḍ	ك	k
ب	b	ذ	dh	ط	ṭ	ل	l
ت	t	ر	r	ظ	ẓ	م	m
ث	th	ز	z	ع	‘	ن	n
ج	j	س	s	غ	gh	هـ	h
ح	ḥ	ش	sh	ف	f	و	w
خ	kh	ص	ṣ	ق	q	ي	y

With a *shaddah*, both medial and final consonants are doubled.

Vowels, diphthongs, etc.

Short:	ـَ a	ـِ i	ـُ u
Long:	ـَا ā	ـِي ī	ـُو ū
Diphthongs:	ـَوْ aw		
	ـَيْ ay		

In the name of God, the Most Compassionate, the Ever Merciful

PREFACE

We live in a time when people can spread their views around the globe at the touch of a button. Yet such views may come from people of little knowledge who can confuse and even misguide others. This is a concern that has become particularly acute with the widespread misrepresentation of Islam, both by those hostile towards it, and, unfortunately, even those who claim to profess it. Through their evil but eloquent schemes, such people can misrepresent the sacred teachings of this religion, and direct the ignorant and the ill-fated to perpetrate heinous crimes against both an innocent public and an innocent religion. Such deception and misinterpretation has sadly become all too common in our day, and among its causes is, undoubtedly, the relative inaccessibility of sound Islamic scholarship and literature in the English language. An additional cause is the suggestion that there is no difference between experts and non-experts. It is as though God never declared in His Book: '*How can those who know be equal to those who do not know?*' (39: 9)

A plethora of problems can arise when non-experts begin to consider themselves experts on a subject matter. One can vividly illustrate with the example of a person who requires medical attention. A sensible individual would choose to be treated by a medical professional—an expert in the field—rather than risk their health by consenting to a medical procedure from someone who fancies themselves a doctor simply because they have read a medical textbook in their spare time. Indeed, there are serious legal consequences for those who claim to practice medicine without a recognized licence—one which is granted because they have been through

rigorous training and examination. Such legal repercussions are entirely appropriate of course, for such frauds place people's worldly lives at risk. Yet why is it that when it comes to our health we seek an expert opinion, but when it comes to our everlasting Hereafter so many of us prefer to follow someone who considers himself an expert after reading just a couple of books? Simply put: why do we risk our eternity by following those who are not qualified? Why do we not seek out recognized experts? As God the Almighty says: '*ask the people of knowledge if you do not know*.' (16: 43) It is precisely to address this gap between scholarly works and non-scholarly opinions that we have endeavoured to produce this invaluable resource.

After reading the entirety of *al-Minhāj* in Turkish, the Director of Organisational Management at Islamic Community Milli Gorus (ICMG) Youth Australia, Adem Temel, conducted a meeting with our small team in which we studied the book and recognized how blessed we were to have access to such a stupendous work. It was evident that the renowned scholar and author of *al-Minhāj*, Imam al-Nawawī, may God have mercy on him, had wisdom and knowledge many today are in desperate need of. Indeed, *al-Minhāj* is one of the greatest and most respected commentaries on *Ṣaḥīḥ* Muslim. While an English translation of a hadith can struggle to convey its apparent meaning, let alone the appropriate context and other subtleties, commentaries by experts like Imam al-Nawawī can shed light on hadiths more comprehensively and thus give us greater access to the intended meaning while guarding us against misunderstanding. During a subsequent meeting, our team compared the Turkish translation of *Fī Ẓilāl al-Qur'an* with the English translation by Dr Adil Salahi and were impressed by the remarkable consistency between the two translations. Immediately thereafter, the team made the decision to contact Dr Salahi with a view to proposing that he translate Imam al-Nawawī's *al-Minhāj* into English. We were overjoyed to hear his positive response.

A number of people and organizations have contributed to this project. Firstly, this work would not have been possible without Adil Salahi's

mastery of both the Arabic and English languages. His love of Prophet Muhammad, peace and blessings be upon him, and his dedication to making knowledge accessible has led to the translation of significant works from the Islamic literary heritage. Second, the ICMG Youth Australia and Kube Publishing (UK) teams worked closely to meet all project timelines. Third, many individuals and groups volunteered to support this project both physically and financially. Lastly, and most importantly, God, the Almighty, guided us, brought ease, and opened closed doors to make everything possible.

'… and my success can only come from God. In Him I put my trust, and to Him I will return.' (11: 88)

Halim Erbasi
ICMG Youth Australia
Director of Education

BEFORE YOU READ

There are some important points that the reader, particularly a student of Hadith, needs to bear in mind when using this book. Although these have been explained in the Introduction to the first volume, it is considered worthwhile to remind readers of the editorial method followed in this work.

1. Numbering and references

It is surprising, but there has never been a full and serial numbering of hadiths in *Ṣaḥīḥ* Muslim, and hence references to hadiths vary. A hadith is often referenced by book and chapter: 'Related by Muslim, Book of Faith, Chapter so-and-so', and so forth. This is a difficult method of referencing, particularly because the headings of some chapters run into two or three lines, or even longer. The fullest numbering of the hadiths in *Ṣaḥīḥ* Muslim is that given in *al-Muʿjam al-Mufahras li-Alfāẓ al-Ḥadīth*, but many hadiths are left without numbers. These are versions of the previous hadith, differing only in their chains of transmission, and it was probably felt that they should count with the earlier and often more complete version.

Al-Muʿjam al-Mufahras is a concordance of the words of the Prophet's hadiths listed in the most important nine anthologies: al-Bukhārī, Muslim, Abū Dāwūd, al-Tirmidhī, al-Nasā'ī, Ibn Mājah, as well as Mālik's *al-Muwaṭṭa'*, Ahmad's *al-Musnad* and al-Dārimī's *Sunan*. It was prepared by a group of forty Western researchers of Islamic studies under the supervision of Arent Jan Wensinck (1882–1939) and edited by the Egyptian scholar Muhammad Fu'ād ʿAbd al-Bāqī (1882–1967).[i]

However, *al-Muʿjam al-Mufahras* gives a serial number to each 'book' in Muslim's *Ṣaḥīḥ*. Thus, it lists the numbers of the hadiths in the Book of

Faith from 1 to 380, and then begins the numbering in the Book of Cleansing from 1. As such, it does not give a complete serial numbering to the entire anthology. I have therefore decided to provide serial numbering, giving every hadith its own numbered identification. In doing so, I follow the method adopted by the late hadith scholar Mūsā Shāhīn Lāshīn (1920–2009) in his 10-volume commentary, *Fatḥ al-Munʿim fī Sharḥ Ṣaḥīḥ Muslim*. This method does not assign a number for a hadith that differs from the one before it only in its chain of transmission, but that has exactly the same text.

Muslim's *Ṣaḥīḥ* has been translated into English by Abd al-Hamid Siddiqui. The translation is well circulated and its better known edition, published by Dār al-Salām, is available online. After looking carefully at this translation, I have decided to provide my own. However, the translation gives a full serial numbering of the hadiths listed by Muslim, bringing the total to 7,190 hadiths. This is different from Lāshīn's method of numbering, which brings the total to 6,571 hadiths. To make it easier for readers who wish to refer to Dār al-Salām's translation, I give the number in that translation in brackets before the chain of transmission.

Thus, three sets of numbers are included before the chain of transmission of each hadith. The first is a complete serial number following Lāshīn's method. The second is that of *al-Muʿjam al-Mufahras* and the third is that of Dār al-Salām's translation given in brackets. Where Lāshīn or *al-Muʿjam al-Mufahras* does not give a hadith a number, because it is the same as the hadith before it, I follow the convention of giving it the mark '000'. Thus, either of the first two numbers may be replaced by 000. Where Dār al-Salām's translation omits a hadith or does not give it a number, I give it the mark '0'. The pattern of numbering is simplified, as follows:

Lāshīn – *Al-Muʿjam* – (Dār al-Salām)

This applies to all the hadiths that are entered in the anthology itself, beginning with the Book of Faith. Imam Muslim wrote a long introduction to his work, explaining his method. In it, he includes ninety-two hadiths and statements by the early scholars of Hadith. These are given separate numbers, from 1 to 92. Only a few of these are entered in *al-Muʿjam al-Mufahras*, because the majority are attributed to scholars of Hadith. Whichever is entered in *al-Muʿjam al-Mufahras* its number is stated. Dār al-Salām's translation does not include this introduction.

When a hadith is entered in any of the other five anthologies considered to be the most authentic, I mention these in a footnote. Where no such information is given, it means that the hadith is entered only in Muslim's anthology. The Arabic original of each hadith is given immediately after the English translation, but this applies to the main body of the anthology, not to Muslim's introduction.

Imam Muslim divided his anthology into books, each covering an important area of the Islamic faith, such as the Book of Faith, the Book of Prayer, etc. He did not make further classification. It was left to Imam al-Nawawī to divide each book into chapters, and give headings to these. These chapters were later given numbers in *al-Muʿjam al-Mufahras*. The headings and their numbers are given in this translation. However, as many headings tend to be long, I have tried to reduce them while retaining the elements highlighted in the headings. It should be pointed out, however, that some of these chapters are not given numbers. Where no number is given to a chapter in *al-Muʿjam al-Mufahras*, it appears without a number in this translation.

There are a few instances where the same number is given to two consecutive hadiths. In order to indicate that this is not an error, but merely following the Arabic original, the repetition is indicated by the symbol [R].

2. The chain of transmission

Hadith scholars were very specific in their terminology. Therefore, when they used synonymous words, they imparted clear distinction to them. Thus, the words *ḥaddathanā*, *akhbaranā*, *anba'anā*, and *ʿan*, have different meanings, although linguistically speaking they are very similar and denote receiving information from a named person. However, *ḥaddathanā* is used to refer to a process whereby the teacher reads out the hadith to his students, whether he is narrating from memory or reading out loud directly. *Akhbaranā* and *anba'anā* are practically identical in meaning. However, the first refers to a process whereby a student is reading aloud from his teacher's books in the presence of the teacher. *Anba'anā* does not specify this process, but means that the information was passed on by the teacher or in his presence. *ʿAn*, on the other hand, does not specify any process, nor does it specify that the reporter actually heard the teacher's narration or his student's reading out in his presence. Indeed, it could, thus, mean that the reporter heard the hadith from a colleague who was in the teacher's circle at the time.

In order to reflect these differences, 'narrated' is the term used here for *ḥaddathanā*, 'reported' for *akhbaranā*, 'mentioned' for *anba'anā*, and 'from' for *ʿan*. However, any of the first three ways could involve a one-to-one situation in which the reporter is the only one present with his teacher. In Arabic, this is marked by changing the last letter in the three Arabic words, using 'ī' instead of 'ā'. Thus the words become *ḥaddathanī*, *akhbaranī*, and *anba'anī*. To reflect the difference in the English translation the words 'to me' have been used after 'narrated', 'reported' and 'mentioned' to indicate the one-to-one situation, while the three words on their own indicate the presence of others when the narration took place.

Readers will also note that in some hadiths the chain of transmission includes the mark [H]. This is indicated in Arabic by the use of the letter [Ḥ], and it may occur once, twice, or even more in the chain of transmission of the same hadith. What this signifies is that the hadith is narrated by two or more chains of transmission, but these join up at some stage. Rather than

give them separately, repeating the names of reporters from where they join up to the Prophet's companion, Hadith scholars use this way to indicate that the different chains are joined at this point.

Another symbol used in the chain of transmission is [R], but this is much less frequent. It simply indicates that the number given to a particular hadith is repeated, which means that the number has been given to more than one hadith instead of giving each of them a separate number.

Sometimes Muslim narrates a hadith from three of his teachers and uses the word 'narrated', but their methods of learning from their teacher whom they quote differ. Muslim is too careful and meticulous to overlook this fact. He makes this clear by immediately adding something like: 'The first said "narrated" and the other two said "reported".'

3. Word usage

The usage of some Arabic words need to be explained. The word 'imam' is often used in reference to some scholars quoted in this work. It is also used in reference to both Muslim and al-Nawawī. There is, however, a very clear difference in the use of this word by Sunni Muslims and the Shia.

Linguistically speaking, *imām* means 'leader' and is often used, particularly in books of Islamic Jurisprudence, or *fiqh*, to refer to the ruler or the head of state, whether he has the title of caliph or some other title. It is also commonly used to refer to the person who leads congregational prayer. In this second usage, there is no difference between the one who leads the prayer and anyone in the congregation, except that the imam leads and the congregation follow.

A far more common usage of the word is as a title of respect added before the name of a scholar who is recognized for his high achievement and scholarship. This is how it is mostly used in this work. It may, however, also be used here in the sense of the 'leader of congregational prayer' when this topic is discussed, but as such will be clearly identified at that juncture. A scholar who is considered an imam has no special distinction, apart from

what his scholarship gives him; he does not enjoy any special status. It will be noted in this work that the views of some such scholars are outlined, and discussed or rejected. This is clearly a matter of scholarly difference that does not detract from the high standing of the scholar or the one who differs with him.

The Shia have a totally different concept of 'imam'. They give this status to twelve people starting with ʿAlī ibn Abī Ṭālib, the Prophet's cousin, followed by eleven of his descendants through Fāṭimah, his wife and the Prophet's daughter. To the Shia, those imams were infallible and enjoy a rank that is almost equal to that of the Prophet. Indeed, the way some Shia speak of the third Imam, al-Ḥusayn, the Prophet's grandson, gives at times the impression that they rank him above the Prophet himself. Moreover, the Shia believe that the twelfth Imam was taken away and did not die: he will return at some point when he will bring justice to the world. This Shia concept is absolutely unacceptable to Sunni Muslims who do not recognize any such status as belonging to anyone.

We speak of a hadith having a chain of transmission and we mention 'transmitters'. We also use the words 'reporter' and 'narrator'. These three words are used interchangeably and they refer to the people named in the chain of transmission. These have the same status with regard to how the Prophet's statement or action is taught and learnt. When we use the verb 'narrate' we are referring to the action of stating the hadith, whether by reading it out loud or otherwise. However, the word 'narrate' is often used in Islamic literature in reference to the works of the leading scholars of Hadith and what they include in their anthologies. Thus, we often see phrases like 'al-Tirmidhī narrated …', 'al-Bukhārī narrated …'. It is felt that it is better to distinguish the mere quoting of a hadith and its entry in an anthology. Therefore we use the word 'narrate' to indicate quoting a hadith and the word 'relate' to mean the 'entry in a Hadith anthology'. Thus, we

say: ‘al-Bukhārī relates in his *Ṣaḥīḥ*’, or ‘al-Bayhaqī relates in *Shuʿab al-Īmān*’, or ‘al-Nasā’ī relates in *al-Sunan al-Kubrā*’.

The words Abū and Abī are often used in the names of hadith reporters and scholars. These two are the same word, but the endings are case markers according to their position in the sentence. Invariably, Abū is used at the beginning of the sentence and when not preceded by a name, while Abī is used when preceded by the word ‘ibn’. There are other situations that indicate which of the two should be used. Both words mean ‘father of’ and their use indicates an appellation of respect.

The word *mawlā* is used to describe some reporters and other persons mentioned in the commentary. This word is one of the few Arabic words that denote opposite meanings. Linguistically, it means both ‘master’ and ‘slave’, and it is used in the Qur’an to refer to God as the *mawlā* of the believers. When someone is referred to as the *mawlā* of another or of a tribe, it most frequently refers to a slave who was set free. He then allied himself with his former master or with his tribe, as this was a recognized practice in Arabia both under Islam and prior to it.

It will be noted that the phrase ‘but God knows best’ is used very frequently in al-Nawawī’s commentary and by the scholars he quotes: this is a mark of humility. They express their views but shy away from presenting these as the true and correct view, to the exclusion of anything different. It is akin to saying that ‘this is what I know, but ultimate knowledge rests with God’.

The word hadith is used with a capital or small ‘h’ and this usage indicates a difference. When it is used with the lower case first letter it

refers to a single statement by the Prophet. Hence, the reference to one or more statements by the Prophet is always with the lower case. When it is used with a capital first letter, it refers to the Hadith discipline, which is a specialized branch of study, concerned with the Prophet's statements, actions and approvals.

4. Arrangement

Imam al-Nawawī discusses three areas in relation to every hadith included in Muslim's anthology: 1) The general meaning of the hadith and its message. He also outlines the important points it includes and highlights any rulings that it stipulates or may be based on it. 2) The chain of transmission: he identifies the different reporters, giving some information about them and their full names if they are mentioned by first name or by appellation. He also highlights any useful point that the chain provides, and explains any subtle point that reflects Muslim's careful and meticulous scholarship. 3) He explains the language of the hadith, stating the meanings of individual words, particularly those that may be unfamiliar to readers or became rarely used. Where a word, phrase or sentence may have more than one meaning, he discusses these and shows which, if any, is unacceptable. However, he does not follow a single pattern in the arrangement of his commentary. Sometimes, he begins by discussing the chain of transmission, but often he discusses the general meaning first. He may also start by explaining the language and the meaning of individual words.

In this English version, liberty has been taken to follow a consistent pattern. The meaning of the hadith is given first and then its explanation, under the subheading 'text explanation', is provided. This is followed with any discussion al-Nawawī gives concerning the chain of transmission, using the subheading 'transmission'. The information al-Nawawī provides about the meaning of individual words and the pronunciation of unfamiliar words and names has been ignored, because these are already reflected in the translation. However, when he discusses alternative meanings, what is

considered useful to English readers is included. If it is a matter of pronunciation or a grammatical aspect that does not affect the meaning or the message of the hadith, this has been disregarded.

5. Quotations and references

In his monumental work, al-Nawawī cites numerous quotations from various scholars. At times, he mentions the work from which the quotation is made, but in most cases this is not done. Although his work has been checked and verified several times, and published many times in different countries, none of these undertook the task of checking the original works in order to provide detailed references. There are several reasons for this omission. Many of the original works have not been published, but remain in manuscript form held in different libraries in various countries. Moreover, many of these works are voluminous. For example, al-Nawawī often quotes from Imam al-Ḥaramayn, who wrote a large number of books. As mentioned in the biographical note on Imam al-Ḥaramayn, one of his books is published in twenty-one volumes. Although a discerning scholar may have a good guess as to the book from which a particular quote is taken, finding it may require several hours, if not days of hard work. Imam al-Nawawī died 750 years ago and we cannot blame him for not citing his references according to modern methods of citation. It should be remembered that all the books he read were written in long hand and manuscripts of the same book differed in size, number of pages and style of writing. Readers and students must simply trust to his scholarship and piety with all that he quotes from other scholars. May God bless them all for their meticulous and faithful scholarship.

6. Notes and editorial liberty

In certain cases, it is felt that a note should be added within the text to explain certain points or add a particular perspective. This is not surprising considering that the book was written nearly eight centuries ago. In order to

make the addition very clear, it is preceded by the word 'Note' and given an independent paragraph.

In a few cases, a sentence is started by mentioning the author's name before mentioning what he says, such as 'al-Nawawī considers these hadiths self-explanatory, adding only …', and in a very few cases, a short comment by the author is not included in the translation, because time has made it irrelevant and including it would be either confusing or require a long explanatory footnote. Since it is unlikely to concern the reader, it is felt that omission is better. Such liberty is taken only in cases where it is felt that had the author lived in our time, he would have approved of such omission.

Adil Salahi
London
February 2019

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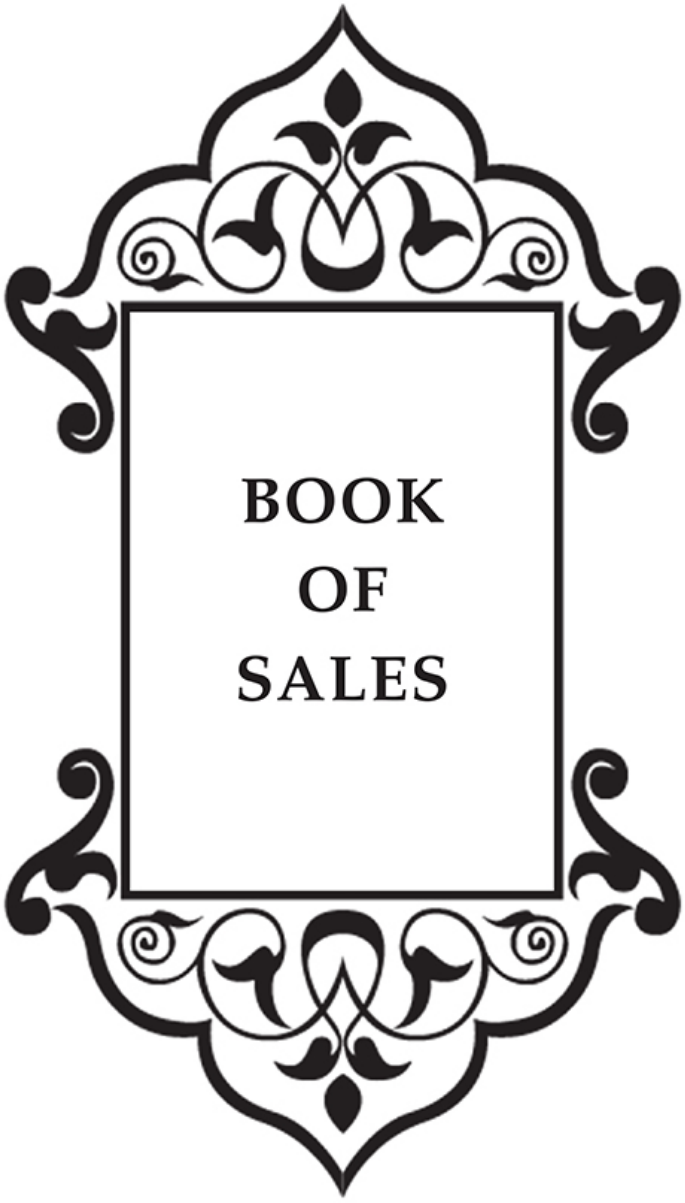
i. Shaykh Muhammad Rashīd Riḍā gave an English copy of *A Manual of the Early Muhammadan Traditions* by Arent Jan Wensinck, Professor of Arabic and Islam at the University of Leiden in Holland, to one of his regular students, Muhammad Fu'ād ʿAbd al-Bāqī, and asked him to translate it into Arabic. ʿAbd al-Bāqī, who was working as a translator at the Agricultural Bank in Cairo at the time, complied and translated the book, but first he wrote to Wensinck for his permission. Wensinck expressed delight at the idea and also sent ʿAbd al-Bāqī a copy of the first part of a concordance of the Prophet's hadiths that he and other researchers were working on.ʿAbd al-Bāqī reviewed the work and found many mistakes. He made a list of these and sent it to Wensinck, who was delighted with the input and recruited ʿAbd al-Bāqī as editor of the entire *al-Muʿjam al-Mufahras* concordance.

Al-Muʿjam al-Mufahras is published in Arabic in eight volumes and is indispensable for any researcher in Islamic Studies. Words are listed alphabetically, and a short sentence or phrase in which the word occurs is given. Then the hadith which includes the sentence or phrase is referenced to any of the nine anthologies. ʿAbd al-Bāqī's role is acknowledged by Wensinck in the Introduction, and working on this concordance enabled Muhammad Fu'ād ʿAbd al-Bāqī to subsequently undertake his own highly acclaimed concordance of the Qur'an.


BOOK
OF
SALES

CHAPTER 8

THE INVALIDITY OF SELLING WHAT IS NOT IN POSSESSION

[3367–29]. (Dar al-Salam 3640–3641) Yaḥyā ibn Yaḥyā narrated:[i] Ḥammād ibn Zayd narrated [H]. Also, Abu al-Rabīʿ al-ʿAtakī and Qutaybah narrated; they said: Ḥammād narrated; from ʿAmr ibn Dīnār; from Ṭāwūs; from Ibn ʿAbbās; that **'God's Messenger (peace be upon him) said: "Whoever has bought some food should not sell it until he has taken full possession of it".'**

Ibn ʿAbbās added: **'I think that the same applies to everything else'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، ح. وَحَدَّثَنَا أَبُو الرَّبِيعِ الْعَتَكِيُّ، وَقُتَيْبَةُ، قَالا: حَدَّثَنَا حَمَّادٌ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ ابْتَاعَ طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ».

قَالَ ابْنُ عَبَّاسٍ وَأَحْسِبُ كُلَّ شَيْءٍ مِثْلَهُ.

Ibn Abi ʿUmar and Ahmad ibn ʿAbdah narrated: they said: Sufyān narrated [H]. Also, Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated; both said: Wakīʿ narrated; from Sufyān (who is al-Thawrī); both from ʿAmr ibn Dīnār; with the same chain of transmission: **a similar text.**

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، وَأَحْمَدُ بْنُ عَبْدَةَ، قَالا: حَدَّثَنَا سُفْيَانُ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ قَالا: حَدَّثَنَا وَكِيعٌ، عَنْ سُفْيَانَ (وَهُوَ الثَّوْرِيُّ)، كِلاَهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

[3368–30]. (Dar al-Salam 3642) Isḥāq ibn Ibrāhīm, Muhammad ibn Rāfiʿ and ʿAbd ibn Ḥumayd narrated:[ii] ʿAbd al-Razzāq (Ibn Rāfiʿ said: 'narrated' and the other two said: 'reported'); Maʿmar reported; from Ibn Ṭāwūs; from his father; from Ibn ʿAbbās. He said: **'God's Messenger (peace be upon him) said: "Whoever has bought some food should not sell it until he has taken possession of it".'**

Ibn ʿAbbās said: **'I think that everything else is the same as food'.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ رَافِعٍ، وَعَبْدُ بْنُ حُمَيْدٍ، (قَالَ ابْنُ رَافِعٍ حَدَّثَنَا وَقَالَ الآخَرَانِ أَخْبَرَنَا) عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ ابْتَاعَ طَعَامًا فَلا يَبِعْهُ حَتَّى يَقْبِضَهُ».

قَالَ ابْنُ عَبَّاسٍ: وَأَحْسِبُ كُلَّ شَيْءٍ بِمَنْزِلَةِ الطَّعَامِ.

[3369–31]. (Dar al-Salam 3643) Abu Bakr ibn Abi Shaybah, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated: Wakīʿ (Isḥāq said 'reported' and the other two said 'narrated'); from Sufyān; from Ibn Ṭāwūs; from his father; from Ibn ʿAbbās. He said that **'God's Messenger (peace be upon him) said: "A person who has bought some food may not sell it until he has weighed it". I said**

to Ibn ʿAbbās: “Why?” He said: “Do you not see that they made their transaction for gold, while the food is delayed”.’

Abu Kurayb did not say ‘delayed’.

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ. (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) وَكِيعٌ، عَنْ سُفْيَانَ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ ابْتَاعَ طَعَامًا فَلا يَبِعْهُ حَتَّى يَكْتَالَهُ». فَقُلْتُ لِابْنِ عَبَّاسٍ لِمَ؟ فَقَالَ: أَلاَ تَرَاهُمْ يَتَبَايَعُونَ بِالذَّهَبِ، وَالطَّعَامُ مُرْجَأٌ؟ وَلَمْ يَقُلْ أَبُو كُرَيْبٍ مُرْجَأٌ.

[3370–32]. (Dar al-Salam 3644) ʿAbdullāh ibn Maslamah al-Qaʿnabī narrated:[iii] Mālik narrated [H]. Also, Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that God’s Messenger said: **‘When a person has bought some food, he must not sell it until it is fully in his possession’.**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ، حَدَّثَنَا مَالِكٌ، ح. وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ ابْتَاعَ طَعَامًا فَلا يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ».

[3371–33]. (Dar al-Salam 3645) Yaḥyā ibn Yaḥyā narrated: he said:[iv] I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar. He said: **‘We used to buy food during God’s Messenger’s lifetime, and he would send someone to us to order us to remove it from the place where we bought it to some other place, before we could sell it’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: كُنَّا فِي زَمَانِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَبْتَاعُ الطَّعَامَ، فَيَبْعَثُ عَلَيْنَا مَنْ يَأْمُرُنَا بِانْتِقَالِهِ مِنَ الْمَكَانِ الَّذِي ابْتَعْنَاهُ فِيهِ، إِلَى مَكَانٍ سِوَاهُ، قَبْلَ أَنْ نَبِيعَهُ.

[3372–34]. (Dar al-Salam 3646) Abu Bakr ibn Abi Shaybah narrated: ʿAlī ibn Mushir narrated; from ʿUbaydullāh [H]. Also, Muhammad ibn ʿAbdullāh ibn Numayr narrated (his text);[v] my father narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar; that God's Messenger (peace be upon him) said: **'Whoever buys food must not sell it until he has had full possession of it'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ عُبَيْدِ اللهِ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ (وَاللَّفْظُ لَهُ)، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اشْتَرَى طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ».

He said: **'We used to buy food from travellers by lot. God's Messenger prohibited us from selling it, until we had removed it from its place'.**

قَالَ: وَكُنَّا نَشْتَرِي الطَّعَامَ مِنَ الرُّكْبَانِ جِزَافًا، فَنَهَانَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ نَبِيعَهُ حَتَّى نَنْقُلَهُ مِنْ مَكَانِهِ.

[3373–35]. (Dar al-Salam 3647) Ḥarmalah ibn Yaḥyā narrated to me: ʿAbdullāh ibn Wahb reported; ʿUmar ibn Muhammad narrated to me; from Nāfiʿ; from ʿAbdullāh ibn ʿUmar; that God's Messenger (peace be upon him) said: **'Whoever has bought some food must not sell it until he has taken it fully in possession'.**

حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، حَدَّثَنِي عُمَرُ بْنُ مُحَمَّدٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اشْتَرَى طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ وَيَقْبِضَهُ».

[3374–36]. (Dar al-Salam 3648) Yaḥyā ibn Yaḥyā and ʿAlī ibn Ḥujr narrated: Yaḥyā said: Ismāʿīl ibn Jaʿfar reported and ʿAlī said: Ismāʿīl narrated; from ʿAbdullāh ibn Dīnār; that he heard Ibn ʿUmar say: God's Messenger (peace be upon him) said: **"Anyone who has bought food must not resell it until it is in his possession".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَعَلِيُّ بْنُ حُجْرٍ. قَالَ يَحْيَى أَخْبَرَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ، وَقَالَ عَلِيٌّ حَدَّثَنَا إِسْمَاعِيلُ، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ ابْتَاعَ طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَقْبِضَهُ».

[3375–37]. (Dar al-Salam 3649) Abu Bakr ibn Abi Shaybah narrated:[vi] ʿAbd al-ʿAlā' narrated; from Maʿmar; from al-Zuhrī; from Sālim; from Ibn ʿUmar; that **'If they bought food by lot during the Prophet's lifetime, they were beaten up if they were selling it at the same place; they were commanded to remove it elsewhere'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ الأَعْلَى، عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ، أَنَّهُمْ كَانُوا يُضْرَبُونَ عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِذَا اشْتَرَوْا طَعَامًا جِزَافًا أَنْ يَبِيعُوهُ فِي مَكَانِهِ حَتَّى يُحَوِّلُوهُ.

[3376–38]. (Dar al-Salam 3650) Ḥarmalah ibn Yaḥyā narrated to me:[vii] Ibn Wahb narrated; Yūnus reported to me; from Ibn Shihāb; Sālim ibn ʿAbdullāh reported to me; that his father said: **‘I saw people who, during God’s Messenger’s lifetime, were punished if they sold the food they bought by estimate at the same place where they bought it. They were ordered to take it to their own place’.**

Ibn Shihāb said: ‘‘**Ubaydullāh ibn ʿAbdullāh ibn ʿUmar narrated to me that his father used to buy food by estimation and then he would take what he bought to his family’.**

وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، أَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللهِ، أَنَّ أَبَاهُ قَالَ: قَدْ رَأَيْتُ النَّاسَ فِي عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، إِذَا ابْتَاعُوا الطَّعَامَ جِزَافًا يُضْرَبُونَ فِي أَنْ يَبِيعُوهُ فِي مَكَانِهِمْ، وَذَلِكَ حَتَّى يُؤْوُوهُ إِلَى رِحَالِهِمْ.

قَالَ ابْنُ شِهَابٍ وَحَدَّثَنِي عُبَيْدُ اللهِ بْنُ عَبْدِ اللهِ بْنِ عُمَرَ أَنَّ أَبَاهُ كَانَ يَشْتَرِي الطَّعَامَ جِزَافًا، فَيَحْمِلُهُ إِلَى أَهْلِهِ.

[3377–39]. (Dar al-Salam 3651) Abu Bakr ibn Abi Shaybah, Ibn Numayr and Abu Kurayb narrated: they said: Zayd ibn Ḥubāb narrated; from al-Ḍaḥḥāk ibn ʿUthmān; from Bukayr ibn ʿAbdullāh ibn al-Ashajj; from Sulaymān ibn Yasār; from Abu Hurayrah; that **‘God’s Messenger (peace be upon him) said: “When any of you buys food, he must not resell it until he has assessed its quantity”.’**

In Abu Bakr’s narration: **‘When any of you purchases food…’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ نُمَيْرٍ، وَأَبُو كُرَيْبٍ قَالُوا: حَدَّثَنَا زَيْدُ بْنُ حُبَابٍ، عَنِ الضَّحَّاكِ بْنِ عُثْمَانَ، عَنْ بُكَيْرِ بْنِ عَبْدِ اللهِ بْنِ الأَشَجِّ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اشْتَرَى طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَكْتَالَهُ». وَفِي رِوَايَةِ أَبِي بَكْرٍ «مَنِ ابْتَاعَ».

[3378–40]. (Dar al-Salam 3652) Isḥāq ibn Ibrāhīm narrated: ʿAbdullāh ibn al-Ḥārith al-Makhzūmī reported; al-Ḍaḥḥāk ibn ʿUthmān narrated; from Bukayr ibn ʿAbdullāh ibn al-Ashajj; from Sulaymān ibn Yasār; from Abu Hurayrah. **‘He said to Marwān: “Have you allowed usurious sales?” Marwān said: “I have not”. Abu Hurayrah said: “You have allowed the selling of promissory notes, while God’s Messenger (peace be upon him) prohibited selling food until it has been taken into possession”. Marwān addressed the people prohibiting the sale of such notes. Sulaymān said: “I saw guards taking such notes from people’s hands”.’**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عَبْدُ اللهِ بْنُ الْحَارِثِ الْمَخْزُومِيُّ، حَدَّثَنَا الضَّحَّاكُ بْنُ عُثْمَانَ، عَنْ بُكَيْرِ بْنِ عَبْدِ اللهِ بْنِ الأَشَجِّ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ لِمَرْوَانَ: أَحْلَلْتَ بَيْعَ الرِّبَا؟ فَقَالَ مَرْوَانُ: مَا فَعَلْتُ. فَقَالَ أَبُو هُرَيْرَةَ: أَحْلَلْتَ بَيْعَ الصِّكَاكِ، وَقَدْ نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الطَّعَامِ حَتَّى يُسْتَوْفَى. قَالَ: فَخَطَبَ مَرْوَانُ النَّاسَ فَنَهَى عَنْ بَيْعِهَا. قَالَ سُلَيْمَانُ: فَنَظَرْتُ إِلَى حَرَسٍ يَأْخُذُونَهَا مِنْ أَيْدِي النَّاسِ.

[3379–41]. (Dar al-Salam 3653) Isḥāq ibn Ibrāhīm narrated: Rawḥ reported; Ibn Jurayj narrated; Abu al-Zubayr narrated to me; that he heard Jābir ibn ʿAbdullāh say: God’s Messenger (peace be upon

him) used to say: **“If you have bought some food, do not resell it until you have taken full possession of it”.’**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا رَوْحٌ، حَدَّثَنَا ابْنُ جُرَيْجٍ، حَدَّثَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: كَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «إِذَا ابْتَعْتَ طَعَامًا فَلاَ تَبِعْهُ حَتَّى تَسْتَوْفِيَهُ».

Text Explanation

These hadiths make clear that one must not resell what one has bought if one has not taken full possession of it. The hadiths also make it permissible to sell by lot, which means selling an amount of something without measure, weight or estimate. This is the view of the Shāfiʿī School. Al-Shāfiʿī and his disciples said that selling a heap of wheat, dates or other things is valid, not forbidden. Is it, however, reprehensible? Al-Shāfiʿī gives two views, the more correct of which is that it is mildly discouraged. The other view is that it is not discouraged. Selling something for an uncounted ‘lot’ of coins is similarly valid. Our scholars mention that Mālik says that selling by lot is not valid if the seller knows what the lot contains.

These hadiths prohibit selling what one has bought until the seller has taken possession of what he is selling. Scholars have different views on this point. Al-Shāfiʿī said that selling what has been bought is not valid before possession has been taken, whether it is food, real property, movable property, cash, or something else. ʿUthmān al-Battī said that it is permissible whatever is being sold. Abu Ḥanīfah said it is not permissible in anything, except real property. Mālik said that it is not permissible in the case of food but it is permissible in everything else. Many scholars agree with Mālik’s view. Others say that it is not permissible in what is measured by volume or weight, but permissible in other things. ʿUthmān al-Battī’s view is quoted by al-Māzarī and *Qadi* ʿIyāḍ, but the majority of scholars do

not report it. They mention the unanimity that selling bought food before it is taken into possession is invalid. They add that the difference in views applies to other things and it is odd and discarded, but God knows best.

In Hadith 3375, people were punished if they sold what they bought before having possession of it. This provides evidence that the ruler may punish a person if he conducts an invalid sale, and the punishment may be corporal, or in some other way as scholars have defined.

In Hadith 3378, Abu Hurayrah says to Marwān, who was the Governor of Madinah, that he allowed the sale of promissory notes while the Prophet prohibited the selling of food until it had come into the buyer's possession. Marwān acted on Abu Hurayrah's advice and stopped such sale. The promissory note referred to in this hadith was a document issued by the ruler or a government official stating the amount of provisions due to a particular person. It thus explains what so-and-so is due to receive of food or other articles. The recipient may sell this note to another person before receiving the stated provisions. Scholars differ on the validity of such sale, with the more correct view upheld by our scholars and others that it is permissible to sell. The other view is that it is not permissible. Those who take up the second view concur with the apparent meaning of what Abu Hurayrah said and his argument. Those who allow such sale understand the case cited by Abu Hurayrah in the following way: a person who receives a promissory note sells it to someone, and this one then sells it to a third person before he has received the goods. The prohibition thus applies to the second, not the first transaction. The first one, to whom the promissory note is given, is the owner of the goods stated and his ownership is already settled. As he is not a buyer, it is permissible for him to sell before taking possession, in the same way as one can sell what one has inherited before actually taking possession of it.

Qadi ʿIyāḍ explains the case in the same way I have outlined. He then says: 'They used to sell and buy such notes, then those who buy them may sell them before they have received the goods. They were told not to do so.

This situation was reported to ʿUmar ibn al-Khaṭṭāb and he stopped it, ordering the seller not to sell any food he had bought until he had received it in full'.

The hadith is stated in detail in *al-Muwaṭṭa'*: 'Promissory notes were issued to people during Marwān's time, stating amounts of food. People sold these notes before actually taking possession of what was stated'. There is a clearer case in *al-Muwaṭṭa'*, which mentions that Ḥakīm ibn Ḥizām bought food ordered by ʿUmar ibn al-Khaṭṭāb, and then Ḥakīm sold the food he bought before receiving it, but God knows best.

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i. Related by al-Bukhari, 2135; Abu Dāwūd, 3497; al-Tirmidhī, 1291; al-Nasā'ī, 4612; Ibn Mājah, 2227.

ii. Related by al-Bukhari, 2132; Abu Dāwūd, 3496; al-Nasā'ī, 4611.

iii. Related by al-Bukhari, 2126 and 2136; Abu Dāwūd, 3492; al-Nasā'ī, 4609; Ibn Mājah, 2226.

iv. Related by Abu Dāwūd, 3493; al-Nasā'ī, 4619.

v. Related by Ibn Mājah, 2229.

vi. Related by al-Bukhari, 6852; Abu Dāwūd, 3498; al-Nasā'ī, 4622.

vii. Related by al-Bukhari, 2137.

CHAPTER 9

THE PROHIBITION OF SELLING AN UNKNOWN QUANTITY

[3380–42]. (Dar al-Salam 3654) Abu al-Ṭāhir Ahmad ibn ʿAmr ibn Sarḥ narrated to me:[i] Ibn Wahb reported; Ibn Jurayj narrated to me; that Abu al-Zubayr reported to him: I heard Jābir ibn ʿAbdullāh say: **'God's Messenger (peace be upon him) prohibited the sale of a heap of dates of unknown volume for a specific volume of dates'.**

حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ، أَخْبَرَنَا ابْنُ وَهْبٍ، حَدَّثَنِي ابْنُ جُرَيْجٍ، أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الصُّبْرَةِ مِنَ التَّمْرِ، لاَ يُعْلَمُ مَكِيلَتُهَا، بِالْكَيْلِ الْمُسَمَّى مِنَ التَّمْرِ

[3381–000]. (Dar al-Salam 3655) Isḥāq ibn Ibrāhīm narrated: Rawḥ ibn ʿUbādah narrated; Ibn Jurayj narrated; Abu al-Zubayr reported to me that he heard Jābir ibn ʿAbdullāh say: **'God's Messenger prohibited…' the same text but did not mention 'of dates' at the end of the hadith.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ... بِمِثْلِهِ، غَيْرَ أَنَّهُ لَمْ يَذْكُرْ «مِنَ التَّمْرِ» فِي آخِرِ الْحَدِيثِ.

Text Explanation

This hadith makes it clear that it is forbidden to sell dates for dates until it is ascertained that the two exchanged lots are equal. Scholars say that unawareness of equality in this area is the same as real variance, because the Prophet made it clear ‘unless it is measure for measure’. Such equality is not ascertained when the quantity is unknown. The same applies to any kind of goods where variance may take place, such as an exchange of wheat for wheat, barley for barley, dates for dates, etc. But God knows best.

i. Related by al-Nasā’ī, 4561 and 4562.

CHAPTER 10

THE OPTION TO CANCEL A SALE BEFORE PARTING

[3382–43]. (Dar al-Salam 3656–3657) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that God's Messenger said: **'Both parties to a sale have a choice against each other, as long as they have not parted; except for a deal stating an option.'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْبَيِّعَانِ كُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ عَلَى صَاحِبِهِ مَا لَمْ يَتَفَرَّقَا إِلاَّ بَيْعَ الْخِيَارِ».

Zuhayr ibn Ḥarb and Muhammad ibn al-Muthannā narrated:[ii] both said: Yaḥyā (who is al-Qaṭṭān) narrated [H]. Also, Abu Bakr ibn Abi Shaybah narrated; Muhammad ibn Bishr narrated [H]. And, Ibn Numayr narrated; my father narrated; all of them from ʿUbaydullāh; from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him) [H]. Zuhayr ibn Ḥarb and ʿAlī ibn Ḥujr narrated to me;[iii] both said: Ismāʿīl narrated [H]. Also, Abu al-Rabīʿ and Abu Kāmil narrated; both said: Ḥammād (who is Ibn Zayd) narrated; all from Ayyūb; from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him) [H]. And, Ibn al-Muthannā and Ibn Abi ʿUmar

narrated;[iv] both said: ʿAbd al-Wahhāb narrated. He said: I heard Yaḥyā ibn Saʿīd [H]. Furthermore, Ibn Rāfiʿ narrated; Ibn Abi Fudayk narrated; al-Ḍaḥḥāk reported; both from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him): **a similar text to Mālik's narration from Nāfi'**.

حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالا: حَدَّثَنَا يَحْيَى (وَهُوَ الْقَطَّانُ) ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا مُحَمَّدُ بْنُ بِشْرٍ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، كُلُّهُمْ عَنْ عُبَيْدِ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، وَعَلِيُّ بْنُ حُجْرٍ، قَالا: حَدَّثَنَا إِسْمَاعِيلُ، ح. وَحَدَّثَنَا أَبُو الرَّبِيعِ وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ (وَهُوَ ابْنُ زَيْدٍ)، جَمِيعًا عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ح. وَحَدَّثَنَا ابْنُ الْمُثَنَّى، وَابْنُ أَبِي عُمَرَ، قَالا: حَدَّثَنَا عَبْدُ الْوَهَّابِ قَالَ: سَمِعْتُ يَحْيَى بْنُ سَعِيدٍ ح. وَحَدَّثَنَا ابْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، أَخْبَرَنَا الضَّحَّاكُ، كِلاَهُمَا عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: نَحْوَ حَدِيثِ مَالِكٍ، عَنْ نَافِعٍ.

[3383–44]. (Dar al-Salam 3658) Qutaybah ibn Saʿīd narrated:[v] Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated; al-Layth reported; from Nāfiʿ; from Ibn ʿUmar; from God's Messenger (peace be upon him) that he said: **'When two people have agreed a sale, each of them continues to have the option to cancel as long as they have not parted, remaining together, or either one of them offers the other a choice. If one of them offered a choice to the other and they agree the sale on that basis, the sale is binding. If they part from each other without either of them cancelling the deal, the sale is binding.'**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ نَـافِـعٍ، عَنِ ابْنِ عُمَرَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «إِذَا تَبَايَعَ الرَّجُلاَنِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ، مَا لَمْ يَتَفَرَّقَا وَكَانَا جَمِيعًا، أَوْ يُخَيِّرُ أَحَدُهُمَا الآخَرَ. فَإِنْ خَيَّرَ أَحَدُهُمَا الآخَرَ، فَتَبَايَعَا عَلَى ذَلِكَ فَقَدْ وَجَبَ الْبَيْعُ. وَإِنْ تَفَرَّقَا بَعْدَ أَنْ تَبَايَعَا، وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ».

[3384–45]. (Dar al-Salam 3659) Zuhayr ibn Ḥarb and Ibn Abi ʿUmar narrated to me:[vi] both from Sufyān. Zuhayr said: Sufyān ibn ʿUyaynah narrated; from Ibn Jurayj. He said: Nāfiʿ dictated to me; that he heard ʿAbdullāh ibn ʿUmar say: **‘God’s Messenger (peace be upon him) said: “If the two parties agree a sale, each of them has an option [to cancel] until they part, or else their sale includes an option. If their deal includes an option, it is binding”.’**

Ibn Abi ʿUmar adds in his narration: Nāfiʿ said: **‘If he made a deal with someone and he wished not to let him go back on it, he would rise and walk a little then rejoin him’.**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، وَابْنُ أَبِي عُمَرَ، كِلاَهُمَا عَنْ سُفْيَانَ. قَالَ زُهَيْرٌ حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ جُرَيْجٍ قَالَ: أَمْلَى عَلَىَّ نَافِعٌ: سَمِعَ عَبْدَ اللهِ بْنَ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِذَا تَبَايَعَ الْـمُتَبَايِعَانِ بِالْبَيْعِ، فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ مِنْ بَيْعِهِ مَا لَمْ يَتَفَرَّقَا. أَوْ يَكُونُ بَيْعُهُمَا عَنْ خِيَارٍ، فَإِذَا كَانَ بَيْعُهُمَا عَنْ خِيَارٍ فَقَدْ وَجَبَ». زَادَ ابْنُ أَبِي عُمَرَ فِي رِوَايَتِهِ قَالَ نَافِعٌ: فَكَانَ إِذَا بَايَعَ رَجُلاً فَأَرَادَ أَنْ لاَ يُقِيلَهُ، قَامَ فَمَشَى هُنَيَّةً ثُمَّ رَجَعَ إِلَيْهِ.

[3385–46]. (Dar al-Salam 3660) Yaḥyā ibn Yaḥyā, Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated:[vii] Ismāʿīl ibn Jaʿfar (Yaḥyā ibn Yaḥyā said: ‘reported’ and the others said: ‘narrated’); from ʿAbdullāh ibn Dīnār; that he heard Ibn ʿUmar say: **‘God’s Messenger (peace be upon him) said: “No sale is binding between any two parties to a deal until they have parted, except for an option sale”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، و يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ. (قَالَ يَحْيَى بْنُ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) إِسْمَاعِيلُ بْنُ جَعْفَرٍ، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «كُلُّ بَيِّعَيْنِ لا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا، إِلاَّ بَيْعُ الْخِيَارِ».

Text Explanation

The first hadith, No. 3382, makes it clear that both buyer and seller have the option to cancel a deal of sale which they have agreed to, as long as they are together at the place where the deal was negotiated. The option to cancel only applies until they have physically parted. This is agreed upon by the large majority of scholars from the time of the Prophet’s Companions and later generations. Those who share this view include ʿAlī ibn Abi Ṭālib, Ibn ʿUmar, Ibn ʿAbbās, Abu Hurayrah, Abu Barzah al-Aslamī, Ṭāwūs, Saʿīd ibn al-Musayyib; ʿAṭā’, Sharīḥ the Judge, al-Ḥasan al-Baṣrī, al-Shaʿbī, al-Zuhrī, al-Awzāʿī, Ibn Abi Dhi’b; Sufyān ibn ʿUyaynah, al-Shāfiʿī, Ibn al-Mubārak, ʿAlī ibn al-Madīnī, Ahmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abu Thawr, Abu ʿUbayd, al-Bukhari, all hadith scholars and many others. Abu Ḥanīfah and Mālik said that the option to cancel during the meeting of the two parties is not confirmed, and the sale is binding once commitment by the seller and acceptance by the buyer have been made. The same view is

shared by Rabīʿah, reported from al-Nakhaʿī, and made in one report from al-Thawrī. The authentic hadiths we have here contradict their view, and they have no valid answer for them. The correct view is that the option is given as the majority of scholars confirm, but God knows best.

The same hadith says: 'except for a deal stating an option'. There are three interpretations of this mentioned by our scholars and others. The most correct of these is that it refers to the option to cancel after the deal has been completed and before leaving the place where the deal has been made. It is thus interpreted as meaning that the option is available to them as long as they have not parted, except if they offer each other the option to cancel while they are together but they choose to go ahead with the deal. Thus, the sale becomes binding upon the exercise of this option and until they part. The second interpretation says that it means: except a deal that includes a condition giving an option to cancel for three days or less. In such a case, the option to cancel is not over at the time of parting but continues until the stated period has lapsed. The third interpretation gives the meaning as a deal incorporating a condition that they have no option to cancel and that the sale is binding once made. This last understanding is adopted by scholars who consider such sale valid, while the more correct view according to our scholars is that it is invalid because of this condition. Such is the difference of opinion on the meaning of this hadith.

Our Shāfiʿī scholars agree that the first interpretation is more valid. It is the one stated from al-Shāfiʿī, and they report it from him. Many of them consider any other understanding incorrect. Al-Bayhaqī is one of the eminent scholars preferring this understanding, and he explains its basis and evidence, showing the weakness of the contrary evidence. He then says:

> Many scholars consider that the report quoting ʿUmar: 'A sale is a deal or an option', to be lacking in authenticity. It is not permissible in a deal of sale to remove the option to cancel. A sale stating an option means an option to cancel after the sale has been agreed, or it

means a sale with a condition giving the option to cancel over three days.

The correct view is that 'a sale stating an option' means giving the option to cancel after the sale has been agreed, because Nāfiʿ either expressed this as 'a sale with option' or he interpreted it as such. Al-Tirmidhī is one of the scholars who considers this view valid. In his book *al-Ishrāq*, Ibn al-Mundhir reports this explanation to be shared by al-Thawrī, al-Awzāʿī, Ibn ʿUyaynah, ʿUbaydullāh ibn al-Ḥasan al-ʿAnbarī, al-Shāfiʿī and Isḥāq ibn Rāhawayh, but God knows best.

Hadith No. 3383 quotes the Prophet: 'When two people have agreed a sale, each of them continues to have the option to cancel as long as they have not parted, remaining together, or either one of them offers the other a choice. If they agree the sale on that basis, the sale is binding'. The meaning of 'one of them offers the other a choice' is that he says to him: 'Choose to go ahead with the sale'. If he makes this choice, the deal is thus concluded and becomes binding. If the choice is given but the other party remains silent, that party continues to have the option. As for the one who made the offer, our scholars hold two views; the more correct one being that he no longer has an option, as appears from the wording of the hadith.

Hadith No. 3384 mentions that when Ibn ʿUmar made a deal of sale and he did not want the other party to change his mind, he would walk away for a little and come back. This makes clear that the parting of the two parties to the deal is physical and not verbal, as some understand. To them, verbal parting means the verbal agreement of the sale.

Hadith No. 3385 says: 'No sale is binding between any two parties to a deal until they have parted, except for an option sale'. This means that the agreed sale does not become binding on both parties until they have parted.

i. Related by al-Bukhari, 2111; Abu Dāwūd, 3454; al-Nasā'ī, 4477.
ii. Related by al-Nasā'ī, 44, 78.
iii. Related by al-Bukhari, 2109; Abu Dāwūd, 3455; al-Nasā'ī, 4481 and 4482.
iv. Related by al-Tirmidhī, 1245; al-Nasā'ī, 4485 and 4486.
v. Related by al-Bukhari, 2112; al-Nasā'ī in a shorter version, 4483 and 4484; Ibn Mājah, 2181.
vi. Related by al-Nasā'ī, 4480.
vii. Related by al-Nasā'ī, 4487.

CHAPTER 11

TRUTH AND CLARITY IN SALES

[3386–47]. (Dar al-Salam 3661–3662) Muhammad ibn al-Muthannā narrated:[i] Yaḥyā ibn Saʿīd narrated; from Shuʿbah [H]. Also, ʿAmr ibn ʿAlī narrated; Yaḥyā ibn Saʿīd and ʿAbd al-Raḥmān ibn Mahdī narrated; both said: Shuʿbah narrated; from Qatādah; from Abu al-Khalīl; from ʿAbdullāh ibn al-Ḥārith; from Ḥakīm ibn Ḥizām; from the Prophet (peace be upon him). He said: **'The two parties to a sale deal have the option to cancel until they have parted. If they are truthful and explain things, their deal is blessed, but if they lie and suppress information, the blessing of their deal is obliterated'.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ شُعْبَةَ، ح. وَحَدَّثَنَا عَمْرُو بْنُ عَلِيٍّ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، قَالا: حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنْ أَبِي الْخَلِيلِ، عَنْ عَبْدِ اللهِ بْنِ الْحَارِثِ، عَنْ حَكِيمِ بْنِ حِزَامٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْبَيِّعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا. فَإِنْ صَدَقَا وَبَيَّنَا بُورِكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَذَبَا وَكَتَمَا مُحِقَتْ بَرَكَةُ بَيْعِهِمَا»

ʿAmr ibn ʿAlī narrated: ʿAbd al-Raḥmān ibn Mahdī narrated; Hammām narrated; from Abu al-Tayyāḥ. He said: I heard ʿAbdullāh ibn al-Ḥārith narrating from Ḥakīm ibn Ḥizām; from the Prophet: **the same text. Muslim ibn al-Ḥajjāj said: 'Ḥakīm ibn**

Ḥizām was born inside the Kaʿbah and he lived for one hundred and twenty years’.

حَدَّثَنَا عَمْرُو بْنُ عَلِيٍّ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، حَدَّثَنَا هَمَّامٌ، عَنْ أَبِي التَّيَّاحِ، قَالَ: سَمِعْتُ عَبْدَ اللهِ بْنَ الْحَارِثِ، يُحَدِّثُ عَنْ حَكِيمِ بْنِ حِزَامٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِمِثْلِهِ. قَالَ مُسْلِمُ بْنُ الْحَجَّاجِ: وُلِدَ حَكِيمُ بْنُ حِزَامٍ فِي جَوْفِ الْكَعْبَةِ وَعَاشَ مِائَةً وَعِشْرِينَ سَنَةً.

Text Explanation

The hadith speaks about the importance of each one of the two parties to a business deal explaining to the other any defect in the goods being sold or the price, and the need to be truthful about the price and what is being exchanged between them. When they do this in truth and honesty, they will enjoy a blessed deal. Otherwise, no blessing will be given to them. The ‘blessing’ in this context means growth and increase.

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i. Related by al-Bukhari, 2079, 2082, 2110, 2114 and in a shorter version 2108; Abu Dāwūd, 3459; al-Tirmidhī, 1246; al-Nasā’ī, 4469 and 4476.

CHAPTER 12

NO CHEATING IN SALES

[3387–48]. (Dar al-Salam 3663) Yaḥyā ibn Yaḥyā, Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated: Ismāʿīl ibn Jaʿfar (Yaḥyā ibn Yaḥyā said: ‘reported’ and the others said: ‘narrated’); from ʿAbdullāh ibn Dīnār; that he heard Ibn ʿUmar say: **‘A man mentioned to God’s Messenger (peace be upon him) that he was being cheated in sales. The Prophet said to him: “Say to whoever you have a deal with: *lā khilābah* [meaning: No cheating]”. When he [the man] did a deal he used to say *lā khiyābah*.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَيَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ. (قَالَ يَحْيَى بْنُ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) إِسْمَاعِيلُ بْنُ جَعْفَرٍ، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ: ذَكَرَ رَجُلٌ لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ يُخْدَعُ فِي الْبُيُوعِ، فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ بَايَعْتَ فَقُلْ لا خِلاَبَةَ». فَكَانَ إِذَا بَايَعَ يَقُولُ لا خِيَابَةَ.

[3388–000]. (Dar al-Salam 3664) Abu Bakr ibn Abi Shaybah narrated:[i] Wakīʿ narrated; Sufyān narrated [H]. Also, Muhammad ibn al-Muthannā narrated; Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; both from ʿAbdullāh ibn Dīnār; with the same chain of transmission: **the same text**. But **in this version there is no**

mention of the sentence: ‘When he did a deal he used to say *lā khiyābah*.’

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكِيعٌ، حَدَّثَنَا سُفْيَانُ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، كِلاَهُمَا عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. وَلَيْسَ فِي حَدِيثِهِمَا فَكَانَ إِذَا بَايَعَ يَقُولُ لاَ خِيَابَةَ.

Text Explanation

The man had a defect in pronunciation, and was unable to say the word God’s Messenger taught him, *lā khilābah*, pronouncing it differently. *Lā khilābah* means ‘no cheating’. Thus, he was saying to the other party: ‘It is not permissible for you to cheat me’, or ‘I am not bound by your cheating’. [We may add that *lā khiyābah* is not a familiar word, but it refers to failure in an effort].

The man was Ḥabbān ibn Munqidh ibn ʿAmr of the Anṣār. He had two sons, Yaḥyā and Wāsiʿ. He took part in the Battle of Uḥud. It is also suggested that the hadith refers to his father Munqidh ibn ʿAmr, who attained 130 years of age. The man received a head injury in one of the battles he fought with the Prophet, as he was hit by a stone thrown from a fort. The injury affected his speech and his mental ability, but he continued to be sane. Al-Dāraquṭnī mentioned that he was blind. An unconfirmed report suggests that the Prophet also gave him an option to return any goods he bought within three days.

Scholars differ about this hadith, with some of them considering it applicable only to this man, and that cheating in business is binding, allowing no option of return to the cheated party, whether the measure of cheating is large or small. This is the view of al-Shāfiʿī, Abu Ḥanīfah and others, and it is the more correct version reported from Mālik and al-Thawrī. Scholars of Baghdad said that the cheated party has the option to

cancel in view of this hadith, on condition that the cheating amounts to one-third of the value of the goods. If it is less than one-third and no option of cancellation applies. The first view is the correct one because there is no confirmed evidence that the Prophet gave him such an option; he only told him to say: ‘No cheating’. This does not mean that an option of cancellation is given. Had such an option been given, it would have been a special case, not a common one. The option would not have applied to anyone else, without further evidence confirming applicability, but God knows best.

i. Related by al-Bukhari, 2407.

CHAPTER 13

THE PROHIBITION OF SELLING AGRICULTURAL PRODUCE BEFORE CONFIRMING ITS QUALITY

[3389–49]. (Dar al-Salam 3665) Yaḥyā ibn Yaḥyā narrated:[i] I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger prohibited the sale of agricultural produce until its quality was confirmed. He prohibited both seller and buyer’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهَا. نَهَى الْبَائِعَ وَالْمُبْتَاعَ.

Ibn Numayr narrated: my father narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him): **the same text.**

حَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ.

[3390–50]. (Dar al-Salam 3666) ʿAlī ibn Ḥujr al-Saʿdī and Zuhayr ibn Ḥarb narrated to me:[ii] both said: Ismāʿīl narrated; from Ayyūb; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger (peace be upon him) prohibited the sale of dates until they had coloured**

and the sale of ears of grain until they had whitened and become free of blight. He prohibited both seller and buyer’.

وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالا: حَدَّثَنَا إِسْمَاعِيلُ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ النَّخْلِ حَتَّى يَزْهُوَ، وَعَنِ السُّنْبُلِ حَتَّى يَبْيَضَّ، وَيَأْمَنَ الْعَاهَةَ. نَهَى الْبَائِعَ وَالْمُشْتَرِيَ.

[3391–51]. (Dar al-Salam 3667–3670) Zuhayr bin Ḥarb narrated to me: Jarīr narrated; from Yaḥyā ibn Saʿīd; from Nāfiʿ; from Ibn ʿUmar. He said that **‘God’s Messenger (peace be upon him) said: “Do not buy fruit until it appears to be of good quality and free of blight”. He said: “appears of good quality means its redness and yellowness is apparent”.’**

حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا جَرِيرٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَبْتَاعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلاَحُهُ، وَتَذْهَبَ عَنْهُ الآفَةُ». قَالَ: يَبْدُوَ صَلاَحُهُ: حُمْرَتُهُ وَصُفْرَتُهُ.

Muhammad ibn al-Muthannā and Ibn Abi ʿUmar narrated: both said: ʿAbd al-Wahhāb narrated; from Yaḥyā; with the same chain of transmission: **the same text up to ‘until it appears of good quality’ but did not mention the rest.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ أَبِي عُمَرَ قَالا: حَدَّثَنَا عَبْدُ الْوَهَّابِ، عَنْ يَحْيَى، بِهَذَا الإِسْنَادِ. «حَتَّى يَبْدُوَ صَلاَحُهُ». لَمْ يَذْكُرْ مَا بَعْدَهُ.

Ibn Rāfiʿ narrated: Ibn Abi Fudayk narrated; al-Ḍaḥḥāk reported; from Nāfiʿ; from Ibn ʿUmar; from the Prophet: **the same text as ʿAbd al-Wahhāb's narration.**

حَدَّثَنَا ابْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، أَخْبَرَنَا الضَّحَّاكُ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِ حَدِيثِ عَبْدِ الْوَهَّابِ.

Suwayd ibn Saʿīd narrated: Ḥafṣ ibn Maysarah narrated; Mūsā ibn ʿUqbah narrated to me; from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him): **the same text as the hadith narrated by Mālik and ʿUbaydullāh [i.e., Hadith No. 3389].**

حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ، حَدَّثَنَا حَفْصُ بْنُ مَيْسَرَةَ، حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِ حَدِيثِ مَالِكٍ وَعُبَيْدِ اللهِ.

[3392–52]. (Dar al-Salam 3671) Yaḥyā ibn Yaḥyā, Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated: Ismāʿīl (who is Ibn Jaʿfar) (Yaḥyā ibn Yaḥyā said: 'reported' and the others said: 'narrated'); from ʿAbdullāh ibn Dīnār; that he heard Ibn ʿUmar say that **'God's Messenger said: "Do not sell fruit until its quality has become apparent".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَيَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ. (قَالَ يَحْيَى بْنُ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَبِيعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلاَحُهُ».

[3393–000].[iii] Zuhayr ibn Ḥarb narrated to me: ʿAbd al-Raḥmān narrated from Sufyān [H]. Also, Ibn al-Muthannā narrated;[iv]

Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; both from ʿAbdullāh ibn Dīnār; both with the same chain of transmission: **the same text, but in Shuʿbah's narration, it is added: 'Ibn ʿUmar was asked: "what does apparent quality mean?" He said: "it is free of blight".'**

وَحَدَّثَنِيهِ زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ، عَنْ سُفْيَانَ، ح. وَحَدَّثَنَا ابْنُ الْمُثَنَّى، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، كِلاهُمَا عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، بِهَذَا الإِسْنَادِ. وَزَادَ فِي حَدِيثِ شُعْبَةَ: فَقِيلَ لِابْنِ عُمَرَ: مَا صَلاَحُهُ؟ قَالَ: تَذْهَبُ عَاهَتُهُ.

[3394–53]. (Dar al-Salam 3672) Yaḥyā ibn Yaḥyā narrated: Abu Khaythamah reported; from Abu al-Zubayr; from Jābir [H]. Also, Ahmad ibn Yūnus narrated; Zuhayr narrated; Abu al-Zubayr narrated; from Jābir. He said: **'God's Messenger (peace be upon him) prohibited (or prohibited us) selling fruits until they ripen'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا أَبُو خَيْثَمَةَ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، ح. وَحَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: نَهَى - أَوْ نَهَانَا - رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الثَّمَرِ، حَتَّى يَطِيبَ.

[3395–54]. (Dar al-Salam 3673) Ahmad ibn ʿUthmān al-Nawfalī narrated: Abu ʿĀṣim narrated [H]. Also, Muhammad ibn Ḥātim narrated to me (his text): Rawḥ narrated; both said: Zakariyyā' ibn Isḥāq narrated; ʿAmr ibn Dīnār narrated; that he heard Jābir ibn ʿAbdullāh say: **'God's Messenger (peace be upon him)**

prohibited the selling of fruit until it appears to be of good quality'.

حَدَّثَنَا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ، حَدَّثَنَا أَبُو عَاصِمٍ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ (وَاللَّفْظُ لَه)، حَدَّثَنَا رَوْحٌ، قَالا: حَدَّثَنَا زَكَرِيَّاءُ بْنُ إِسْحَاقَ، حَدَّثَنَا عَمْرُو بْنُ دِينَارٍ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهُ.

[3396–55]. (Dar al-Salam 3674) Muhammad ibn al-Muthannā and Ibn Bashshār narrated:[v] both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from ʿAmr ibn Murrah; from Abu al-Bakhtarī. He said: **'I asked Ibn ʿAbbās about the sale of dates [on the trees]. He said: "God's Messenger (peace be upon him) prohibited the sale of dates until one has eaten of it, or it is eaten, and until it is weighed". I asked: "What is weighed?" A man present said: "until its quantity has been estimated".'**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ عَمْرِو بْنِ مُرَّةَ، عَنْ أَبِي الْبَخْتَرِيِّ قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنْ بَيْعِ النَّخْلِ، فَقَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ النَّخْلِ حَتَّى يَأْكُلَ مِنْهُ، أَوْ يُؤْكَلَ. وَحَتَّى يُوزَنَ. قَالَ: فَقُلْتُ مَا يُوزَنُ؟ فَقَالَ رَجُلٌ عِنْدَهُ: حَتَّى يَحْزَرَ.

[3397–56]. (Dar al-Salam 3675) Abu Kurayb Muhammad ibn al-ʿAlā' narrated to me: Muhammad ibn Fuḍayl narrated; from his father; from Ibn Abi Nuʿm; from Abu Hurayrah. He said: **'Do not buy fruits until their quality has become apparent'.**

حَدَّثَنِي أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلاَءِ، حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنْ أَبِيهِ، عَنِ ابْنِ أَبِي نُعْمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَبْتَاعُوا الثِّمَارَ حَتَّى يَبْدُوَ صَلاَحُهَا».

[3398–57]. (Dar al-Salam 3676) Yaḥyā ibn Yaḥyā narrated:[vi] Sufyān ibn ʿUyaynah reported; from al-Zuhrī [H]. Also, Ibn Numayr and Zuhayr ibn Ḥarb narrated (their text); both said: Sufyān narrated; al-Zuhrī narrated; from Sālim; from Ibn ʿUmar; that **‘The Prophet prohibited the selling of dates until their quality has become apparent and the selling of unripe dates for ripe dates’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ وَزُهَيْرُ بْنُ حَرْبٍ (وَاللَّفْظُ لَهُمَا) قَالا: حَدَّثَنَا سُفْيَانُ، حَدَّثَنَا الزُّهْرِيُّ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهُ، وَعَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ.

[3399–000].[vii] Ibn ʿUmar said: Zayd ibn Thābit told us that **‘God’s Messenger gave concession permitting the sale of dates on the *ʿarāyā* trees’.**

Ibn Numayr adds in his version the words: **‘that they be sold’.**

قَالَ ابْنُ عُمَرَ: وَحَدَّثَنَا زَيْدُ بْنُ ثَابِتٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ فِي بَيْعِ الْعَرَايَا. زَادَ ابْنُ نُمَيْرٍ فِي رِوَايَتِهِ: «أَنْ تُبَاعَ».

[3400–58]. (Dar al-Salam 3677) Abu al-Ṭāhir and Ḥarmalah narrated to me (Ḥarmalah’s text):[viii] both said: ‘Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; Saʿīd ibn al-Musayyib and

Abu Salamah ibn ʿAbd al-Raḥmān narrated to me; that Abu Hurayrah said that **‘God’s Messenger said: “Do not buy dates until their quality has become clear, and do not buy unripe dates for ripe dates”**.’

Ibn Shihāb said: Sālim ibn ʿAbdullāh ibn ʿUmar narrated to me; from his father; from the Prophet (peace be upon him): **exactly the same text.**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ (وَاللَّفْظُ لِحَرْمَلَةَ) قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، حَدَّثَنِي سَعِيدُ بْنُ الْـمُسَيَّبِ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَبْتَاعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلاَحُهُ، وَلا تَبْتَاعُوا الثَّمَرَ بِالتَّمْرِ».

قَالَ ابْنُ شِهَابٍ: وَحَدَّثَنِي سَالِمُ بْنُ عَبْدِ اللهِ بْنِ عُمَرَ، عَنْ أَبِيهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: مِثْلَهُ سَوَاءً.

Text Explanation

These hadiths mention the prohibition of selling dates, fruits and grains before their quality has been confirmed. The Prophet uses the words that suit each type, mentioning that dates should begin to ripen, and this is marked by starting to change colour, becoming red or yellow. In hadith No. 3390, he mentions that grains may not be sold until they have whitened. This means that the grain stiffens and its quality is ascertained. Moreover, it should be free of any blight that may ruin it.

In Hadith 3396 Ibn ʿAbbās answers a question saying that ‘God’s Messenger (peace be upon him) prohibited the sale of dates until one has eaten of it, or it is eaten, and until it is weighed. I asked: What is weighed?

A man present said: until its quantity has been estimated'. That he says that dates are not to be sold 'until one has eaten of it or it is eaten' means that it is generally ready to be eaten. This is confirmed when it appears to be of good quality. That it should also be 'weighed' is explained as meaning 'estimated'. This is its clear meaning because the quantity of the dates when it is still on the tree can only be estimated. This explanation given in the hadith is considered by scholars, or some of them, to be stated by Ibn ʿAbbās, although it was said by someone else. However, Ibn ʿAbbās did not object to that person's statement, which makes it akin to his own, but God knows best.

The rulings based on the hadiths mentioned in this chapter include that if agricultural produce is sold before it is ascertained to be of reasonable quality, but on condition of its being picked up, the sale is unanimously agreed to be valid. Our scholars say that if the condition to pick up the fruit is stated but it remains undone, the sale is valid but the seller requires the buyer to pick it up. If both agree to leave it for a while, it is permissible. If the sale is conducted on condition that the produce is left on the plant, ungathered, the sale is invalid according to scholars' unanimous view. The reason being the produce may be ruined before it could be collected. This means that the seller would have wrongfully taken the buyer's money, as stated in more than one hadith. If the agreement states the condition to collect the fruits, such harm is not caused. If the sale is unspecific, stating no condition, our view, which is the consensus of scholars, is that the sale is invalid because these hadiths make general statements. We say the sale is valid on condition of picking up the produce, as scholars generally agree. Thus, we give the hadiths a specific sense on the basis of the unanimity of scholars in the case of adding the condition of collecting. As the normal practice in respect of fruits is to leave them, this is treated like a condition.

If the agricultural produce is sold after its quality has become evident, its sale is permissible, whether under a condition of collecting or leaving it, as these hadiths imply. Moreover, what occurs after a particular goal has

been achieved is different from what occurs before its achievement, unless it is of the same type. Moreover, in most cases, the produce then is mostly sound, unlike what it is after its soundness is confirmed.

If the produce is sold on condition that it remains unpicked, or without any condition, the seller is obliged to irrigate it until the time of harvest, given this is the normal practice. This is the view of our school, and it is agreed upon by Mālik. Abu Ḥanīfah said that the condition of collecting is obligatory, but God knows best.

In hadith No. 3390, the sale of grain still in its ears is prohibited 'until it has whitened'. This provides evidence in support of the view of Mālik, the Kufi scholars and the majority of scholars stating that it is permissible to sell ears of grain which have toughened. The view of our Shāfiʿī School adds certain details: if the ears are of barley, corn or similar types where the grains are visible, it is permissible to sell. If it is wheat and similar types with covered grains, al-Shāfiʿī gives two views: the more recent is that it is invalid and the older view is that the sale is valid. Before the grains have toughened, the produce is not permissible to sell unless collection is added as a condition, as we have already explained.

If the crops are sold together with the land before the grains have toughened, and without conditions, the sale is permissible as the crops are in this case joined with the land. The same applies to fruits sold without conditions together with the trees before the quality has been ascertained. Legumes may not be sold on their plants, on their own, without the land, unless the condition of collection is included. Likewise, it is not permissible to sell water melons and similar fruits before their quality has become evident. This case has numerous details. I have discussed these and the relevant aims of its rulings in *Rawḍat al-Ṭālibīn* and *Sharḥ al-Muhadhdhab*, in which I put together numerous situations.

In these hadiths, the Prophet applies his prohibition to both seller and buyer. It applies to the seller because he wants to wrongfully take someone else's money and it applies to the buyer because he agrees with the seller on

something forbidden and because he wastes his money. Islam forbids wasting money.

Transmission

The transmission of hadith No. 3394 has two chains as follows: ‘Yaḥyā ibn Yaḥyā narrated: Abu Khaythamah reported; from Abu al-Zubayr; from Jābir [H]. Also, Ahmad ibn Yūnus narrated; Zuhayr narrated; Abu al-Zubayr narrated; from Jābir’. According to Muslim’s own standard and the rule followed by other Hadith scholars, Muslim should have stopped the first chain at Abu al-Zubayr, without mentioning Jābir, because this would have been sufficiently clear. However, he mentions Jābir in both chains for greater clarity. We mentioned similar cases before.

The chain of transmission of hadith No. 3395 mentions: ‘Ahmad ibn ʿUthmān al-Nawfalī narrated: Abu ʿĀṣim narrated [H]. Also, Muhammad ibn Ḥātim narrated to me (his text): Rawḥ narrated; both said: Zakariyyā’ ibn Isḥāq narrated.’ In some manuscripts, the last part occurs as: ‘Rawḥ narrated. He said: Zakariyyā’ narrated’. If one is using such a copy, he should read correctly, saying ‘Rawḥ narrated; both said: Zakariyyā’ narrated’, because both Rawḥ and Abu ʿĀṣim narrate from Zakariyyā’. To use the other formula mentioning Rawḥ followed by ‘he said’ suggests that only Rawḥ narrates from Zakariyyā’, and he would discard the other chain mentioning Abu ʿĀṣim. This is something that is often overlooked. Hence, I am highlighting it. A correction on such copies should be added, mentioning ‘both said’.

It may be suggested that the formula, ‘he said: Zakariyyā’ narrated,’ may be used in the sense that Rawḥ said this. It is indicated by the use of the phrase ‘his text’ in this chain. Well, this is possible, but the apparent meaning is what we said first, because it is more informative and it would not abandon Abu ʿĀṣim’s narration, but God knows best.

The chain of transmission of hadith No. 3396 mentions Abu al-Bakhtarī. His name is Saʿīd ibn ʿImrān, but his name is also said to be Ibn Abi

ʿImrān, and also Ibn Fayrūz. He belonged to Kufah and was a *mawlā* of the Ṭayy tribe. Hilāl ibn Ḥibbān mentions that he was one of the best learned people of Kufah. Ḥabīb ibn Abi Thābit, a highly distinguished scholar, said: 'I met with Saʿīd ibn Jubayr and Abu al-Bakhtarī. Abu al-Bakhtarī was the best learned Fiqh scholar among us'. He was killed in the Battle of al-Jamājim in year 83 AH, 703 CE. Yaḥyā ibn Maʿīn, Abu Ḥātim and Abu Zurʿah classify him as 'reliable'. I have mentioned this about him because al-Ḥākim Abu Ahmad says in his book *al-Asmā' wal-Kunā* that 'Abu al-Bakhtarī is not considered by them to be accurate'. Al-Ḥākim's statement is unacceptable, because it is not explained, while several other scholars state that he is reliable. We have explained this rule in the early part of the book.

The chain of transmission of hadith No. 3397 includes Ibn Abi Nuʿm. His name is Dukayn ibn al-Faḍl. All commentaries on Muslim's *Ṣaḥīḥ* do not give further information about him.

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i. Related by al-Bukhari, 2194; Abu Dāwūd, 3367.
ii. Related by Abu Dāwūd, 3368; al-Tirmidhī in a shorter version, 1227; al-Nasā'ī, 4565.
iii. In Dar al-Salam's edition, this hadith is attached to the previous one and not given a number
iv. Related by al-Bukhari, 1486.
v. Related by al-Bukhari, 2246, 2247, 2248, 2249 and 2250.
vi. Related by al-Nasā'ī, 4532.
vii. In Dar al-Salam's edition, this hadith is reported as a part of the previous hadith.
viii. Related by al-Nasā'ī, 4533; Ibn Mājah, 2215.

CHAPTER 14

THE PROHIBITION OF SELLING RIPENING DATES FOR FULLY RIPE ONES, EXCEPT…

[3401–59]. (Dar al-Salam 3678) Muhammad ibn Rāfiʿ narrated to me:[i] Ḥujayn ibn al-Muthannā narrated; al-Layth narrated; from ʿUqayl; from Ibn Shihāb; from Saʿīd ibn al-Musayyib; that **‘God’s Messenger (peace be upon him) prohibited *al-muzābanah* and *al-muḥāqalah* sales: *muzābanah* means selling dates on the trees against ripe dates; and *muḥāqalah* means selling grains in the ears against wheat; and he prohibited renting agricultural land against wheat’.**

He [meaning Saʿīd ibn al-Musayyib] said: ‘Sālim ibn ʿAbdullāh reported to me; from God’s Messenger (peace be upon him) that he said: **‘Do not buy fresh dates on the trees until their quality is confirmed, and do not buy fresh dates for ripe dates.’**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا حُجَيْنُ بْنُ الْمُثَنَّى، حَدَّثَنَا اللَّيْثُ، عَنْ عُقَيْلٍ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الْمُزَابَنَةِ وَالْمُحَاقَلَةِ. وَالْمُزَابَنَةُ أَنْ يُبَاعَ ثَمَرُ النَّخْلِ بِالتَّمْرِ، وَالْمُحَاقَلَةُ أَنْ يُبَاعَ الزَّرْعُ بِالْقَمْحِ، وَاسْتِكْرَاءُ الأَرْضِ بِالْقَمْحِ.

قَالَ وَأَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللهِ عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «لا تَبْتَاعُوا الثَّمَرَ حَتَّى يَبْدُوَ صَلاَحُهُ، وَلا تَبْتَاعُوا الثَّمَرَ بِالتَّمْرِ».

And Sālim said: ʿAbdullāh reported to me; from Zayd ibn Thābit; that **‘God’s Messenger (peace be upon him) subsequently permitted the sale of *ʿarāyā* [i.e., trees with dates] against ripening or ripe dates, but gave no other concession’.**

وَقَالَ سَالِمٌ: أَخْبَرَنِي عَبْدُ اللهِ، عَنْ زَيْدِ بْنِ ثَابِتٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ رَخَّصَ بَعْدَ ذَلِكَ فِي بَيْعِ الْعَرِيَّةِ بِالرُّطَبِ، أَوْ بِالتَّمْرِ. وَلَمْ يُرَخِّصْ فِي غَيْرِ ذَلِكَ.

[3402–60]. (Dar al-Salam 3679) Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; from Zayd ibn Thābit that **‘God’s Messenger (peace be upon him) gave a concession that a holder of a tree with dates sells it for its estimated amount of ripe dates’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنْ زَيْدِ بْنِ ثَابِتٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ لِصَاحِبِ الْعَرِيَّةِ أَنْ يَبِيعَهَا بِخَرْصِهَا مِنَ التَّمْرِ.

[3403–61]. (Dar al-Salam 3680–3681) Yaḥyā ibn Yaḥyā narrated: Sulaymān ibn Bilāl reported; from Yaḥyā ibn Saʿīd; Nāfiʿ reported to me; that he heard ʿAbdullāh ibn ʿUmar narrating; that Zayd ibn Thābit narrated to him that **‘God’s Messenger (peace be upon him) gave the concession regarding a tree with dates: a family may buy it for its estimated amount of ripe dates, so that they eat them while ripening’.**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا سُلَيْمَانُ بْنُ بِلاَلٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، أَخْبَرَنِي نَافِعٌ، أَنَّهُ سَمِعَ عَبْدَ اللهِ بْنَ عُمَرَ، يُحَدِّثُ أَنَّ زَيْدَ بْنَ ثَابِتٍ حَدَّثَهُ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ فِي الْعَرِيَّةِ: يَأْخُذُهَا أَهْلُ الْبَيْتِ بِخَرْصِهَا تَمْرًا، يَأْكُلُونَهَا رُطَبًا.

Muhammad ibn al-Muthannā narrated: ʿAbd al-Wahhāb narrated; he said: I heard Yaḥyā ibn Saʿīd say: Nāfiʿ reported to me; with the same chain of transmission: **the same text.**

وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا عَبْدُ الْوَهَّابِ قَالَ: سَمِعْتُ يَحْيَى بْنَ سَعِيدٍ يَقُولُ: أَخْبَرَنِي نَافِعٌ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3404–62]. (Dar al-Salam 3682) Yaḥyā ibn Yaḥyā narrated: Hushaym reported; from Yaḥyā ibn Saʿīd; with the same chain of transmission: **the same except that he said: ‘the ʿ*ariyyah* is a date tree given to a family and they sell it for ripe dates equal to its estimated quantity’.**

وَحَدَّثَنَاهُ يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا هُشَيْمٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، بِهَذَا الإِسْنَادِ. غَيْرَ أَنَّهُ قَالَ: «وَالْعَرِيَّةُ النَّخْلَةُ تُجْعَلُ لِلْقَوْمِ فَيَبِيعُونَهَا بِخَرْصِهَا تَمْرًا».

[3405–63]. (Dar al-Salam 3683) Muhammad ibn Rumḥ ibn al-Muhājir narrated: al-Layth narrated; from Yaḥyā ibn Saʿīd; from Nāfiʿ; from ʿAbdullāh ibn ʿUmar; Zayd ibn Thābit narrated to me that **‘God’s Messenger (peace be upon him) gave the concession to sell the ʿ*ariyyah* for its estimated quantity of ripe dates’.**

Yaḥyā said: **‘The ʿ*ariyyah* means that a man may buy the fruit on date trees so that he can feed his family ripening dates,**

paying the estimated quantity in ripe dates.'

وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحِ بْنِ الْـمُهَاجِرِ، حَدَّثَنَا اللَّيْثُ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ، حَدَّثَنِي زَيْدُ بْنُ ثَابِتٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ فِي بَيْعِ الْعَرِيَّةِ بِخَرْصِهَا تَمْرًا. قَالَ يَحْيَى: الْعَرِيَّةُ أَنْ يَشْتَرِيَ الرَّجُلُ ثَمَرَ النَّخَلاَتِ لِطَعَامِ أَهْلِهِ رُطَبًا بِخَرْصِهَا تَمْرًا.

[3406–64]. (Dar al-Salam 3684) Ibn Numayr narrated: my father narrated; ʿUbaydullāh narrated; Nāfiʿ narrated; from Ibn ʿUmar; from Zayd ibn Thābit; that **'God's Messenger (peace be upon him) gave a concession to sell the *ʿarāyā* for their estimated weight'.**

وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللهِ، حَدَّثَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ، عَنْ زَيْدِ بْنِ ثَابِتٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ فِي الْعَرَايَا أَنْ تُبَاعَ بِخَرْصِهَا كَيْلاً.

[3407–65]. (Dar al-Salam 3685) Ibn al-Muthannā narrated: Yaḥyā ibn Saʿīd narrated; from ʿUbaydullāh; with the same chain of transmission: **the same text**, **but said 'taken for their estimated quantity'.**

وَحَدَّثَنَاهُ ابْنُ الْـمُثَنَّى، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ عُبَيْدِ اللهِ، بِهَذَا الإِسْنَادِ. وَقَالَ: أَنْ تُؤْخَذَ بِخَرْصِهَا.

[3408–66]. (Dar al-Salam 3686) Abu al-Rabīʿ and Abu Kāmil narrated: both said: Ḥammād narrated [H]. Also, ʿAlī ibn Ḥujr narrated to me; Ismāʿīl narrated; both from Ayyūb; from Nāfiʿ; with

the same chain of transmission: that **‘God’s Messenger (peace be upon him) gave a concession to sell the ʿ*arāyā* for their estimated quantity’.**

وَحَدَّثَنَا أَبُو الرَّبِيعِ، وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ، ح. وَحَدَّثَنِيهِ عَلِيُّ بْنُ حُجْرٍ، حَدَّثَنَا إِسْمَاعِيلُ، كِلاَهُمَا عَنْ أَيُّوبَ، عَنْ نَافِعٍ، بِهَذَا الإِسْنَادِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ فِي بَيْعِ الْعَرَايَا بِخَرْصِهَا.

[3409–67]. (Dar al-Salam 3687) ʿAbdullāh ibn Maslamah al-Qaʿnabī narrated:[ii] Sulaymān (meaning Ibn Bilāl) narrated; from Yaḥyā (who is Ibn Saʿīd); from Bushayr ibn Yasār; from some of the Prophet’s Companions of their locality including Sahl ibn Abi Ḥathmah; that **‘God’s Messenger (peace be upon him) prohibited the sale of dates still on the trees for ripe dates; and he said: “That is usurious; that is *muzābanah*”; but he gave the concession of selling the ʿ*ariyyah*: that is one or two date trees which a family takes for its estimated quantity in ripe dates, so that they could eat its fruit while still ripening.’**

وَحَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ، حَدَّثَنَا سُلَيْمَانُ (يَعْنِي ابْنَ بِلاَلٍ) عَنْ يَحْيَى (وَهُوَ ابْنُ سَعِيدٍ)، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ أَهْلِ دَارِهِمْ، مِنْهُمْ سَهْلُ بْنُ أَبِي حَثْمَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الثَّمَرِ بِالتَّمْرِ. وَقَالَ: «ذَلِكَ الرِّبَا تِلْكَ الْمُزَابَنَةُ». إِلاَّ أَنَّهُ رَخَّصَ فِي بَيْعِ الْعَرِيَّةِ: النَّخْلَةِ وَالنَّخْلَتَيْنِ، يَأْخُذُهَا أَهْلُ الْبَيْتِ بِخَرْصِهَا تَمْرًا يَأْكُلُونَهَا رُطَبًا.

[3410–68]. (Dar al-Salam 3688) Qutaybah ibn Saʿīd narrated: Layth narrated [H]. Also, Ibn Rumḥ narrated; al-Layth reported;

from Yaḥyā ibn Saʿīd; from Bushayr ibn Yasār; from God's Messenger's Companions. They said: **'God's Messenger (peace be upon him) gave a concession to sell the *ʿarāyā* for their estimated quantity in ripe dates'.**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا ابْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، أَنَّهُمْ قَالُوا: رَخَّصَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي بَيْعِ الْعَرِيَّةِ بِخَرْصِهَا تَمْرًا.

[3411–69]. (Dar al-Salam 3689–3690) Muhammad ibn al-Muthannā, Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated: all from al-Thaqafī. He said: I heard Yaḥyā ibn Saʿīd say; Bushayr ibn Yasār reported to me; from some of the Prophet's Companions of his locality; that **'God's Messenger (peace be upon him) prohibited…' adding the same text as the hadith narrated by Sulaymān ibn Bilāl from Yaḥyā [Hadith No. 3409], but Isḥāq and Ibn al-Muthannā use the word *zabn*[iii] in place of *ribā* [i.e., usury], while Ibn Abi ʿUmar says 'usury'.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ، جَمِيعًا عَنِ الثَّقَفِيِّ قَالَ: سَمِعْتُ يَحْيَى بْنَ سَعِيدٍ يَقُولُ: أَخْبَرَنِي بُشَيْرُ بْنُ يَسَارٍ، عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، مِنْ أَهْلِ دَارِهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى. فَذَكَرَ بِمِثْلِ حَدِيثِ سُلَيْمَانَ بْنِ بِلاَلٍ عَنْ يَحْيَى. غَيْرَ أَنَّ إِسْحَاقَ وَابْنَ الْمُثَنَّى جَعَلاَ مَكَانَ الرِّبَا الزَّبْنَ. وَقَالَ ابْنُ أَبِي عُمَرَ الرِّبَا.

ʿAmr al-Nāqid and Ibn Numayr narrated: both said: Sufyān ibn ʿUyaynah narrated; from Yaḥyā ibn Saʿīd; from Bushayr ibn Yasār;

from Sahl ibn Abi Ḥathmah; from the Prophet (peace be upon him): **a similar text.**

وَحَدَّثَنَاهُ عَمْرٌو النَّاقِدُ، وَابْنُ، نُمَيْرٍ قَالا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: نَحْوَ حَدِيثِهِمْ.

[3412–70]. (Dar al-Salam 3691) Abu Bakr ibn Abi Shaybah and Ḥasan al-Ḥulwānī narrated: both said: Abu Usāmah narrated; from al-Walīd ibn Kathīr; Bushayr ibn Yasār the ally of Bani Ḥarithah; that Rāfiʿ ibn Khadīj and Sahl ibn Abi Ḥathmah narrated to him that **'God's Messenger prohibited *muzābanah*, selling dates for dates, except for those who have the *ʿarāyā*. He gave permission for these'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَحَسَنٌ الْحُلْوَانِيُّ، قَالا: حَدَّثَنَا أَبُو أُسَامَةَ، عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، حَدَّثَنِي بُشَيْرُ بْنُ يَسَارٍ، مَوْلَى بَنِي حَارِثَةَ، أَنَّ رَافِعَ بْنَ خَدِيجٍ وَسَهْلَ بْنَ أَبِي حَثْمَةَ حَدَّثَاهُ: أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُزَابَنَةِ: الثَّمَرِ بِالتَّمْرِ، إِلاَّ أَصْحَابَ الْعَرَايَا فَإِنَّهُ قَدْ أَذِنَ لَهُمْ.

[3413–71]. (Dar al-Salam 3692) ʿAbdullāh ibn Maslamah ibn Qaʿnab narrated:[iv] Mālik narrated [H]. Yaḥyā ibn Yaḥyā narrated (his text). He said: 'I said to Mālik: Did Dāwūd ibn al-Ḥuṣayn narrate to you; from Abu Sufyān (Ibn Abi Ahmad's ally); from Abu Hurayrah that **'God's Messenger (peace be upon him) gave a concession to sell the *ʿarāyā* for their estimated quantity, when it is less than five *wusqs*, or it is five (Dāwūd doubts whether he said five or less than five). He said: "Yes".'**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبٍ، حَدَّثَنَا مَالِكٌ، ح. وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى (وَاللَّفْظُ لَهُ) قَالَ: قُلْتُ لِمَالِكٍ حَدَّثَكَ دَاوُدُ بْنُ الْحُصَيْنِ، عَنْ أَبِي سُفْيَانَ (مَوْلَى ابْنِ أَبِي أَحْمَدَ) عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَخَّصَ فِي بَيْعِ الْعَرَايَا بِخَرْصِهَا، فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ، أَوْ فِي خَمْسَةٍ؟ (يَشُكُّ دَاوُدُ قَالَ خَمْسَةٌ أَوْ دُونَ خَمْسَةٍ). قَالَ «نَعَمْ».

[3414–72]. (Dar al-Salam 3693) Yaḥyā ibn Yaḥyā al-Tamīmī narrated:[v] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger (peace be upon him) prohibited *muzābanah*, which is to sell ripening dates for ripe dates in measure, and sell grapes for raisins in measure.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُزَابَنَةِ. وَالْمُزَابَنَةُ بَيْعُ الثَّمَرِ بِالتَّمْرِ كَيْلاً، وَبَيْعُ الْكَرْمِ بِالزَّبِيبِ كَيْلاً.

[3415–73]. (Dar al-Salam 3694–3695) Abu Bakr ibn Abi Shaybah and Muhammad ibn ʿAbdullāh ibn Numayr narrated: both said: Muhammad ibn Bushr narrated; ʿUbaydullāh narrated; from Nāfiʿ; that ʿAbdullāh reported to him; that **‘the Prophet prohibited *muzābanah*: the sale of dates on the trees for ripe dates in measure, or grapes for raisins in measure, or grains in ears for wheat in measure’.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ بِشْرٍ، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، أَنَّ عَبْدَ اللهِ، أَخْبَرَهُ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُزَابَنَةِ: بَيْعِ ثَمَرِ النَّخْلِ بِالتَّمْرِ كَيْلاً، وَبَيْعِ الْعِنَبِ بِالزَّبِيبِ كَيْلاً، وَبَيْعِ الزَّرْعِ بِالْحِنْطَةِ كَيْلاً.

Abu Bakr ibn Abi Shaybah narrated:[vi] Ibn Abi Zā'idah narrated; from ʿUbaydullāh; with the same chain of transmission: **the same text**.

وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا ابْنُ أَبِي زَائِدَةَ، عَنْ عُبَيْدِ اللهِ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3416–74]. (Dar al-Salam 3696) Yaḥyā ibn Maʿīn, Ḥārūn ibn ʿAbdullāh and Ḥusayn ibn ʿĪsā narrated to me: they said: Abu Usāmah narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar. He said: **'The Prophet prohibited *muzābanah*: the sale of dates on the trees for ripe dates in measure, or grapes for raisins in measure, or any fruit for its estimated measure'.**

حَدَّثَنِي يَحْيَى بْنُ مَعِينٍ، وَهَارُونُ بْنُ عَبْدِ اللهِ، وَحُسَيْنُ بْنُ عِيسَى، قَالُوا: حَدَّثَنَا أَبُو أُسَامَةَ، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُزَابَنَةِ. وَالْمُزَابَنَةُ بَيْعُ ثَمَرِ النَّخْلِ بِالتَّمْرِ كَيْلاً، وَبَيْعُ الزَّبِيبِ بِالْعِنَبِ كَيْلاً، وَعَنْ كُلِّ ثَمَرٍ بِخَرْصِهِ.

[3417–75]. (Dar al-Salam 3697–3698) ʿAlī ibn Ḥujr al-Saʿdī and Zuhayr ibn Ḥarb narrated to me:[vii] both said: Ismāʿīl (who is Ibn Ibrāhīm) narrated; from Ayyūb; from Nāfiʿ; from Ibn ʿUmar; that **'God's Messenger (peace be upon him) prohibited *muzābanah*: the sale of dates on top of the trees for ripe dates in a stated measure: if it is over, it is mine; and if it is under, I owe [the difference]'.**

حَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ إِبْرَاهِيمَ)، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْـمُزَابَنَةِ. وَالْـمُزَابَنَةُ أَنْ يُبَاعَ مَا فِي رُءُوسِ النَّخْلِ بِتَمْرٍ بِكَيْلٍ مُسَمًّى: إِنْ زَادَ فَلِي، وَإِنْ نَقَصَ فَعَلَيَّ.

Abu al-Rabīʿ and Abu Kāmil narrated: both said: Ḥammād narrated; Ayyūb narrated; with the same chain of transmission: **a similar text.**

وَحَدَّثَنَاهُ أَبُو الرَّبِيعِ، وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ، حَدَّثَنَا أَيُّوبُ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

[3418–76]. (Dar al-Salam 3699) Qutaybah ibn Saʿīd narrated:[viii] Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated to me; al-Layth reported; from Nāfiʿ; from ʿAbdullāh. He said: **‘God’s Messenger (peace be upon him) prohibited *muzābanah*: that one sells the produce of his farm: if it is dates for ripe dates in measure; and if it is grapes for raisins in measure; and if it is grains for a measure of food. He prohibited all this’.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْـمُزَابَنَةِ: أَنْ يَبِيعَ ثَمَرَ حَائِطِهِ، إِنْ كَانَتْ نَخْلاً، بِتَمْرٍ كَيْلاً. وَإِنْ كَانَ كَرْمًا أَنْ يَبِيعَهُ بِزَبِيبٍ كَيْلاً. وَإِنْ كَانَ زَرْعًا أَنْ يَبِيعَهُ بِكَيْلِ طَعَامٍ. نَهَى عَنْ ذَلِكَ كُلِّهِ.

[3419–000].[ix] **The same except in Qutaybah’s narration: ‘Or if it is grains’.**

وَفِي رِوَايَــةِ قُتَيْبَــةَ أَوْ كَـانَ زَرْعًـا

Abu al-Ṭāhir narrated to me: Ibn Wahb reported; Yūnus narrated to me [H]. Also, Ibn Rāfiʿ narrated; Ibn Abi Fudayk narrated; al-Ḍaḥḥāk reported to me [H]. And, Suwayd ibn Saʿīd narrated to me; Ḥafṣ ibn Maysarah narrated; Mūsā ibn ʿUqbah narrated to me; all of them from Nāfiʿ; with the same chain of transmission: **a similar text.**

وَحَدَّثَنِيهِ أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، حَدَّثَنِي يُونُسُ، ح. وَحَدَّثَنَاهُ ابْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، أَخْبَرَنِي الضَّحَّاكُ، ح. وَحَدَّثَنِيهِ سُوَيْدُ بْنُ سَعِيدٍ، حَدَّثَنَا حَفْصُ بْنُ مَيْسَرَةَ، حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ، كُلُّهُمْ عَنْ نَافِعٍ، بِهَذَا الإِسْنَادِ: نَحْوَ حَدِيثِهِمْ.

Text Explanation

Hadith No. 3401 mentions the Prophet's prohibition of selling dates on the trees for ripe dates, but where he gave a concession regarding the *ʿariyyah* or its plural form *ʿarāyā*. It mentions also *muzābanah, muḥāqalah* and land leasing, but we will defer commenting on this part to its appropriate chapter.

The hadiths mention that the Prophet (peace be upon him) prohibited the sale of dates still ripening on the trees against ripe dates, but gave a concession regarding the *ʿarāyā*, which may be sold for their estimated quantities. All scholars agree that it is forbidden to sell ripening dates for dates already ripened, apart from the mentioned concession. They agree that it is a form of usury. They are also in unanimous agreement that it is forbidden to sell grapes for raisins and to sell the grains of wheat still in their ears for pure wheat. According to them, it is the same whether the ripening dates and the grapes are still on the trees or they have been cut.

Abu Ḥanīfah, however, says that if it is cut, it is permissible to sell it for the same measure of dry dates or grapes.

In the case of the *ʿariyyah*, or its plural form, *ʿarāyā*, an estimator would say: the amount of ripening dates on this tree will make, say, three *wusqs*[x] of fully ripe dates. The owner will then sell it to someone for three *wusqs* of ripe dates. The exchange is done on the spot, with the buyer handing over the quantity of ripe dates and the seller allowing the buyer access to the trees. This is permissible if the estimated quantity is less than five *wusqs*. If it is higher, it is forbidden.

What if the amount were five *wusqs* exactly? Would the deal be valid? Two views are reported from al-Shāfiʿī and the more correct one is that it is not permissible. The main case is that it is not permissible to sell ripening dates for ripe dates, but the *ʿarāyā* are permitted as a concession. The narrator doubts whether the amount mentioned was five *wusqs* or less. Therefore, what is certain should be adopted, and this is 'less than five *wusqs*' while the five remain forbidden.

The more correct view is that this concession is permitted to poor and rich, and that it only applies to dates and grapes. One view, which lacks firm evidence, suggests that it applies to the poor only. Another view suggests that it is not restricted to dates and grapes.

Such are the details of the Shāfiʿī School's view on the matter of *ʿariyyah*, and it is endorsed by Ahmad and other scholars. Mālik and Abu Ḥanīfah give it a different interpretation. However, the apparent meaning of the hadiths contradicts their interpretation.

One version of hadith No. 3401 states: 'God's Messenger (peace be upon him) subsequently permitted the sale of *ʿarāyā* [i.e., trees with dates] against ripening or ripe dates, but gave no other concession'. This provides evidence in support of one view of some of our scholars suggesting that it is permissible to sell ripening dates on the trees for ripening dates on the ground, but the more correct view of the majority of our scholars is that it is invalid. They suggest the 'or' in the phrase of 'ripening or ripe dates'

indicates a doubt by the narrator and does not give a choice of permissibility. It means that the concession applies to selling against one of the two, but the narrator doubted which one. Therefore, it is taken to refer to ripe dates, as clearly stated in all other narrations.

Transmission

One of the narrators mentioned in the transmission of several hadiths in this chapter is Bushayr ibn Yasār. He belonged to the Anṣār in Madinah as he was a *mawlā* of the Ḥārithah clan. Yaḥyā ibn Maʿīn said that he was not a brother of Sulaymān ibn Yasār, while Muhammad ibn Saʿd said that he was an eminent scholar and he met many of the Prophet's Companions. However, he narrated only a small number of hadiths. In hadith No, 3409 the chain of transmission mentions 'from some of the Prophet's Companions of their locality' meaning the locality of the Ḥārithah clan of the Anṣār. The word 'some' or its equivalent in Arabic may be used in reference to a small or large number. Of these, the hadith mentions Sahl ibn Abi Ḥathmah. Abu Ḥathmah's name was ʿAbdullāh or ʿĀmir ibn Sāʿidah, and his appellation is Abu Yaḥyā, and some said Abu Muhammad. He was eight years of age when the Prophet passed away.

The chain of transmission of this hadith, No. 3409, is as follows: ''ʿAbdullāh ibn Maslamah al-Qaʿnabī narrated:[xi] Sulaymān (meaning Ibn Bilāl) narrated; from Yaḥyā (who is Ibn Saʿīd); from Bushayr ibn Yasār; from some of the Prophet's Companions of their locality including Sahl ibn Abi Ḥathmah'. There are several very interesting points in this chain of transmission:

1. All narrators in this chain belonged to Madinah. This is very rare in Muslim's *Ṣaḥīḥ*. We have many hadiths with chains of transmission where all the narrators were from Kufah or Basrah, and we highlighted these, but few chains consist of narrators who are all from Madinah.

2. This chain of transmission includes three Anṣārī narrators from Madinah, narrating from each other. This is extremely rare. The three are Yaḥyā ibn Saʿīd, Bushayr and Sahl.
3. It says: Sulaymān (meaning Ibn Bilāl) and Yaḥyā (who is Ibn Saʿīd). As mentioned elsewhere in the book, this is significant. It indicates that when the hadith was narrated, the narrator mentioned only Sulaymān and Yaḥyā, without adding their fathers. Muslim wanted to explain this, but he could not say Sulaymān ibn Bilāl, because he would then be adding to what he heard his teacher say. Hence, Muslim used the formula 'meaning' or 'who is' to better identify the narrator without making an addition, understood to have been stated by his teacher.
4. The chain includes two narrators belonging to the *tābiʿīn* generation, Yaḥyā and Bushayr, with one reporting from the other. Although this occurs frequently, it is significant.
5. The chain of transmission also includes: 'from some of the Prophet's Companions of their locality including Sahl ibn Abi Ḥathmah'. This shows that when a narrator is reporting from a number of people who are all reliable, it is acceptable to mention only some of them and omit the others. We have explained this in the Notes in our Introduction, but God knows best.

Hadith No. 3411 says: 'adding the same text as the hadith narrated by Sulaymān ibn Bilāl'. The one who adds the text is al-Thaqafī. This is clear but I am mentioning it here because mistakes may occur; indeed such a mistake has occurred in this particular instance.

In the chain of transmission of hadith No. 3413, the narrator Abu Sufyān is identified as 'Ibn Abu Ahmad's *mawlā*'. Al-Ḥākim Abu Ahmad said: This Abu Sufyān is a person whose own name is unknown. He is identified as Abu Ahmad's or Ibn Abu Ahmad's *mawlā*. He was a *mawlā* of the ʿAbd al-Ashhal clan of the Anṣār, and he was closely associated with

Ibn Abu Ahmad ibn Jaḥsh. Hence, he is mentioned by this affiliation. He belonged to Madinah and is graded as ‘reliable’.

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i. Related by al-Bukhari, 2173, 2184, 2188, 2192 and 2380; al-Tirmidhī in a longer version, 1300 and 1302; al-Nasā’ī, 4546, 4550, 4552, 4553 and in a longer version, 4554; Ibn Mājah, 2268 and 2269.

ii. Related by al-Bukhari, 2191 and 2384; Abu Dāwūd, 3363; al-Tirmidhī, 1303; al-Nasā’ī, 4556, 4557 and 4558.

iii. The word *zabn* means ‘pushing away’, and it is used here because such a deal often led to disputes.

iv. Related by al-Bukhari, 2190 and 2382; Abu Dāwūd, 3364; al-Tirmidhī, 1301; al-Nasā’ī, 4555.

v. Related by al-Bukhari, 2171 and 2185; al-Nasā’ī, 4548.

vi. Related by Abu Dāwūd, 3361.

vii. Related by al-Bukhari, 2172; al-Nasā’ī, 4547.

viii. Related by al-Bukhari, 2205; al-Nasā’ī, 4563; Ibn Mājah, 2265.

ix. In Dar al-Salam’s edition, this hadith is attached to the previous one.

x. A *wusq* is a volume measure equal to 60 *ṣāʿs*, and a *ṣāʿ* equals four times the fill of an average man’s cupped hands.

xi. Related by al-Bukhari, 2191 and 2384; Abu Dāwūd, 3363; al-Tirmidhī, 1303; al-Nasā’ī, 4556, 4557 and 4558.

CHAPTER 15

SELLING DATE-BEARING TREES

[3420–77]. (Dar al-Salam 3700) Yaḥyā ibn Yaḥyā narrated.[i] He said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger (peace be upon him) said: “Whoever buys date trees that have been pollinated, their fruit belongs to the seller, unless the buyer stipulates something different”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى قَالَ: قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ بَاعَ نَخْلاً قَدْ أُبِّرَتْ، فَثَمَرَتُهَا لِلْبَائِعِ، إِلاَّ أَنْ يَشْتَرِطَ الْـمُبْتَاعُ.

[3421–78]. (Dar al-Salam 3701) Muhammad ibn al-Muthannā narrated: Yaḥyā ibn Saʿīd narrated [H]. Also, Ibn Numayr narrated: my father narrated; both from ʿUbaydullāh [H]. And, Abu Bakr ibn Abi Shaybah narrated (his text); Muhammad ibn Bishr narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger (peace be upon him) said: “Whoever buys date trees that have been pollinated, their produce belongs to the one who pollinated them, unless the buyer stipulates something different”.’**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، جَمِيعًا عَنْ عُبَيْدِ اللهِ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ (وَاللَّفْظُ لَهُ)، حَدَّثَنَا مُحَمَّدُ بْنُ بِشْرٍ، حَدَّثَنَا

عُبَيْدُ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا نَخْلٍ اشْتُرِيَ أُصُولُهَا وَقَدْ أُبِّرَتْ، فَإِنَّ ثَمَرَهَا لِلَّذِي أَبَّرَهَا، إِلاَّ أَنْ يَشْتَرِطَ الَّذِي اشْتَرَاهَا».

[3422–79]. (Dar al-Salam 3702–3703) Qutaybah ibn Saʿīd narrated:[ii] Layth narrated [H]. Also, Ibn Rumḥ narrated; al-Layth reported; from Nāfiʿ; from Ibn ʿUmar; that the Prophet (peace be upon him) said: **‘When a person has pollinated date trees and then sold the trees, the fruits of the date trees belong to the one who pollinated, unless the buyer stipulates otherwise’.**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا ابْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا امْرِئٍ أَبَّرَ نَخْلاً ثُمَّ بَاعَ أَصْلَهَا، فَلِلَّذِي أَبَّرَ ثَمَرُ النَّخْلِ، إِلاَّ أَنْ يَشْتَرِطَ الْمُبْتَاعُ».

Abu al-Rabīʿ and Abu Kāmil narrated: both said: Ḥammād narrated [H]. Also, Zuhayr ibn Ḥarb narrated to me; Ismāʿīl narrated; both from Ayyūb; from Nāfiʿ; with the same chain of transmission: **a similar text.**

وَحَدَّثَنَاهُ أَبُو الرَّبِيعِ، وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ، ح. وَحَدَّثَنِيهِ زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ، كِلاَهُمَا عَنْ أَيُّوبَ، عَنْ نَافِعٍ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

[3423–80]. (Dar al-Salam 3704–3706) Yaḥyā ibn Yaḥyā and Muhammad ibn Rumḥ narrated:[iii] both said: al-Layth reported [H]. Also, Qutaybah ibn Saʿīd narrated; Layth narrated; from Ibn Shihāb; from Sālim ibn ʿAbdullāh ibn ʿUmar; from ʿAbdullāh ibn ʿUmar. He said: **‘I heard God’s Messenger (peace be upon him)**

say: “Whoever buys date trees after they have been pollinated, their produce belongs to the seller, unless the buyer stipulates otherwise; and whoever buys a slave, his property belongs to the one who sold him, unless the buyer stipulates otherwise”.’

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَمُحَمَّدُ بْنُ رُمْحٍ، قَالا: أَخْبَرَنَا اللَّيْثُ، ح. وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ شِهَابٍ، عَنْ سَالِمِ بْنِ عَبْدِ اللهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنِ ابْتَاعَ نَخْلاً بَعْدَ أَنْ تُؤَبَّرَ، فَثَمَرَتُهَا لِلَّذِي بَاعَهَا، إِلاَّ أَنْ يَشْتَرِطَ الْـمُبْتَاعُ. وَمَنِ ابْتَاعَ عَبْدًا فَمَالُهُ لِلَّذِي بَاعَهُ، إِلاَّ أَنْ يَشْتَرِطَ الْـمُبْتَاعُ.

Yaḥyā ibn Yaḥyā, Abu Bakr ibn Abi Shaybah and Zuhayr ibn Ḥarb narrated:[iv] Sufyān ibn ʿUyaynah (Yaḥyā said: ‘reported’ and the other two said: ‘narrated’); from al-Zuhrī; with the same chain of transmission: **the same text**.

وَحَدَّثَنَاهُ يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ. (قَالَ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

Ḥarmalah ibn Yaḥyā narrated to me: Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; Sālim ibn ʿAbdullāh ibn ʿUmar narrated to me; that his father said: **‘I heard God’s Messenger (peace be upon him) say…’ the same text.**

وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، حَدَّثَنِي سَالِمُ بْنُ عَبْدِ اللهِ بْنِ عُمَرَ، أَنَّ أَبَاهُ قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ بِمِثْلِهِ.

Text Explanation

These hadiths make clear that it is perfectly permissible to pollinate date trees and other fruit trees. Scholars hold different views concerning the sale of date trees after or before they have been pollinated. The question they consider is: Are the fruits included in the sale if they are not mentioned at all at the time of the sale? Mālik, al-Shāfiʿī, al-Layth and the majority say that if the date tree is sold after pollination, its fruits belong to the seller unless the buyer stipulates that the fruits belong to him, saying for example: 'I am buying this date tree with its fruit'. If the owner sells it before pollination, its fruits belong to the buyer. However, if the seller stipulates that he takes the fruits, this is acceptable according to al-Shāfiʿī and the majority. Mālik says that such a condition in favour of the seller is not permissible. Abu Ḥanīfah says that if no condition is stipulated, the fruits belong to the seller, whether the tree is sold before or after pollination. Ibn Abi Laylā said that it belongs to the buyer in all cases before and after pollination.

Al-Shāfiʿī and the majority of scholars apply the wording of the hadith concerning pollinated trees. As for unpollinated trees, they operate the concept of the hadith, which is the import of the Prophet's address. To them, this is a good evidence. Abu Ḥanīfah applies the text of the hadith to the pollinated trees. As he does not the import of the Prophet's address, he applies the same ruling to the unpollinated trees. Scholars have objected to this saying that the apparent differs from the non-apparent in matters of sale in the same way that an embryo is attached to its mother when she is sold [if she is a slave], while a born child is not attached to her. Ibn Abu Laylā's view is wrong, contrary to the clear Sunnah. Perhaps he was not aware of the hadith, but God knows best.

Hadith No. 3423 includes: 'whoever buys a slave, his property belongs to the one who sold him, unless the buyer stipulates otherwise'. This ruling is narrated by both al-Bukhari and Muslim as reported by Sālim from his father, ʿAbdullāh ibn ʿUmar. This addition does not occur in the hadith narrated by Nāfiʿ from Ibn ʿUmar, but there is nothing wrong with that, as

Sālim is reliable. Indeed, he is superior to Nāfiʿ, and his addition is acceptable. Both al-Nasā'ī and al-Dāraquṭnī speak in favour of Nāfiʿ's narration, but their argument is unacceptable.

This hadith provides evidence in support of the view of both Mālik and al-Shāfiʿī in his older ruling, stating that if a master gives his slave some property, it belongs to the slave; but if he subsequently sells him, the property reverts to the seller unless the buyer stipulates otherwise, based on the apparent meaning of this hadith. In al-Shāfiʿī's later view and Abu Ḥanīfah's, a slave cannot own anything. They interpret this hadith as referring to the possibility that the slave is in possession of some of his master's property. In this case, it is referred to as the slave's in the sense that it is attached to him and he benefits by it, in the same way as we say, 'the horse's saddle', meaning that the saddle is included in the sale of the horse. Therefore, if the slave is sold, the property belongs to the seller because it is his own, unless the buyer stipulates otherwise. The buyer's condition in this case is valid, because he would have bought both the slave and the property he is in charge of for a total price. This is permissible.

They add that it is necessary to guard against any element of usury. If the property with the slave being sold is in dirhams, which is the silver currency, it is not permissible to sell the slave and his property for a quantity of dirhams. If it is in dīnārs, which is the gold currency at the time, they could not be sold for an amount of dīnārs. If it is wheat, they cannot be sold for an agreed weight of wheat. Mālik said that it is permissible that the buyer makes any condition, even if the property is in dirhams and the price agreed is in dirhams. The same applies to other forms, because the hadith does not specify anything. He adds that the case is treated as if no share of the price applies to the property held by the slave.

The hadith provides evidence in support of the more correct view of our scholars which suggests that if a person sells a slave, whether man or woman, wearing clothes, the clothes are not part of the deal. They belong to the seller, unless the buyer stipulates a condition that they are part of the

deal. Some of our scholars say that the slave's clothes are part of the deal. Some of them suggest that only what covers the *ʿawrah*, or private parts, is included. The more correct view is that no clothes are considered part of the deal, in view of the apparent meaning of the hadith. Moreover, the word 'slave' does not imply having clothes. But God knows best.

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i. Related by al-Bukhari, 2204 and 2716; Abu Dāwūd, 3434; Ibn Mājah, 2210.
ii. Related by al-Bukhari, 2206; al-Nasā'ī, 4649; Ibn Mājah, 2210.
iii. Related by al-Bukhari, 2379; al-Tirmidhī, 1244; Ibn Mājah, 2211.
iv. Related by Abu Dāwūd, 3433; al-Nasā'ī, 4650; Ibn Mājah, 2211.

CHAPTER 16

CERTAIN FORBIDDEN SALES

[3424–81]. (Dar al-Salam 3707–3708) Abu Bakr ibn Abi Shaybah, Muhammad ibn ʿAbdullāh ibn Numayr and Zuhayr ibn Ḥarb narrated:[i] all said: Sufyīn ibn ʿUyaynah narrated; from Ibn Jurayj; from ʿAṭā'; from Jābir ibn ʿAbdullāh. He said: **'God's Messenger (peace be upon him) prohibited the sales of *muḥāqalah, muzābanah, mukhābarah* and the sale of fruits before their quality has been confirmed and that they must only be sold for dīnār and dirham [i.e., money], with the exception of the *ʿarāyā'*.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالُوا جَمِيعًا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ جُرَيْجٍ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُحَاقَلَةِ، وَالْمُزَابَنَةِ، وَالْمُخَابَرَةِ، وَعَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهُ وَلاَ يُبَاعُ إِلاَّ بِالدِّينَارِ وَالدِّرْهَمِ، إِلاَّ الْعَرَايَا.

ʿAbd ibn Ḥumayd narrated: Abu ʿĀṣim reported; Ibn Jubayr reported; from ʿAṭā' and Abu al-Zubayr; that both heard Jābir ibn ʿAbdullāh say: **'God's Messenger (peace be upon him) prohibited…' the same text**.

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا أَبُو عَاصِمٍ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، عَنْ عَطَاءٍ، وَأَبِي الزُّبَيْرِ أَنَّهُمَا سَمِعَا جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ بِمِثْلِهِ.

[3425–82]. (Dar al-Salam 3709) Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated: Makhlad ibn Yazīd al-Jazarī reported; ibn Jurayj narrated; ʿAṭā’ reported to me; from Jābir ibn ʿAbdullāh that **‘God’s Messenger (peace be upon him) prohibited *mukhābarah, muḥāqalah, muzābanah*, and the sale of fruits until they have taste. They must be sold for dirhams and dīnārs [i.e., money], with the exception of the *ʿarāyā*.’**

ʿAṭā’ said: **‘Jābir explained to us, saying: “*mukhābarah* means that one man gives another a piece of uncultivated land and the man invests in it, then takes a portion of its produce. He claimed that *muzābanah* refers to selling ripening dates which are still on trees for a measure of ripe dates. *Muḥaqalah* is the same arrangement regarding other produce, with produce still in its plant form being sold for a measure of grain”.’**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ، أَخْبَرَنَا مَخْلَدُ بْنُ يَزِيدَ الْجَزَرِيُّ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي عَطَاءٌ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُخَابَرَةِ، وَالْمُحَاقَلَةِ، وَالْمُزَابَنَةِ، وَعَنْ بَيْعِ الثَّمَرَةِ حَتَّى تُطْعِمَ. وَلاَ تُبَاعُ إِلاَّ بِالدَّرَاهِمِ وَالدَّنَانِيرِ إِلاَّ الْعَرَايَا.

قَالَ عَطَاءٌ فَسَّرَ لَنَا جَابِرٌ قَالَ: أَمَّا الْمُخَابَرَةُ فَالأَرْضُ الْبَيْضَاءُ يَدْفَعُهَا الرَّجُلُ إِلَى الرَّجُلِ، فَيُنْفِقُ فِيهَا، ثُمَّ يَأْخُذُ مِنَ الثَّمَرِ. وَزَعَمَ أَنَّ الْمُزَابَنَةَ بَيْعُ الرُّطَبِ فِي النَّخْلِ بِالتَّمْرِ كَيْلاً. وَالْمُحَاقَلَةُ فِي الزَّرْعِ عَلَى نَحْوِ ذَلِكَ: يَبِيعُ الزَّرْعَ الْقَائِمَ بِالْحَبِّ كَيْلاً.

[3426–83]. (Dar al-Salam 3710) Isḥāq ibn Ibrāhīm and Muhammad ibn Ahmad ibn Abi Khalaf narrated; both from Zakariyyā'; Ibn Abi Khalaf said: Zakariyyā' ibn ʿAdiy narrated; ʿUbaydullāh reported; from Zayd ibn Abi Unaysah; Abu al-Walīd al-Makkī narrated (as he was sitting at the place of ʿAṭā' ibn Abi Rabāḥ); from Jābir ibn ʿAbdullāh that **'God's Messenger (peace be upon him) prohibited *mukhābarah, muḥāqalah, muzābanah*, and the sale of fruit until they have coloured. (Colouring means becoming reddish or yellowish or until some of it is eaten.) *Muḥāqalah* means selling a field in return for a known measure of food; *muzābanah* is the sale of dates on the trees for quantities of dates; and *mukhābarah* means giving one-third, one-quarter or similar amounts.'**

Zayd said: **'I said to ʿAṭā' ibn Abi Rabāḥ: "Did you hear Jābir ibn ʿAbdullāh reporting this from God's Messenger (peace be upon him)?" He said: "Yes".'**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ، كِلاَهُمَا عَنْ زَكَرِيَّاءَ، قَالَ ابْنُ أَبِي خَلَفٍ حَدَّثَنَا زَكَرِيَّاءُ بْنُ عَدِيٍّ، أَخْبَرَنَا عُبَيْدُ اللهِ، عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ، حَدَّثَنَا أَبُو الْوَلِيدِ الْمَكِّيُّ، وَهُوَ جَالِسٌ عِنْدَ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُحَاقَلَةِ وَالْمُزَابَنَةِ وَالْمُخَابَرَةِ، وَأَنْ تُشْتَرَى النَّخْلُ حَتَّى تُشْقِهَ. – وَالإِشْقَاهُ أَنْ يَحْمَرَّ أَوْ يَصْفَرَّ أَوْ يُؤْكَلَ مِنْهُ شَيْءٌ – وَالْمُحَاقَلَةُ أَنْ يُبَاعَ الْحَقْلُ بِكَيْلٍ مِنَ الطَّعَامِ مَعْلُومٍ، وَالْمُزَابَنَةُ أَنْ يُبَاعَ النَّخْلُ بِأَوْسَاقٍ مِنَ التَّمْرِ، وَالْمُخَابَرَةُ الثُّلُثُ وَالرُّبُعُ وَأَشْبَاهُ ذَلِك.

قَالَ زَيْدٌ قُلْتُ لِعَطَاءِ بْنِ أَبِي رَبَاحٍ: أَسَمِعْتَ جَابِرَ بْنَ عَبْدِ اللهِ يَذْكُرُ هَذَا عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ قَالَ: نَعَمْ.

[3427–84]. (Dar al-Salam 3711) ʿAbdullāh ibn Ḥāshim narrated:[ii] Bahz narrated; Salīm ibn Ḥayyān narrated; Saʿīd ibn Mīnā' narrated; from Jābir ibn ʿAbdullāh. He said: **'God's Messenger (peace be upon him) prohibited *muzābanah*, *muḥāqalah, mukhābarah,* and the sale of fruit until they have coloured'. He said: 'I said to Saʿīd: "What does colouring mean?" He said: "to become reddish, yellowish and some of it is eaten".'**

وَحَدَّثَنَا عَبْدُ اللهِ بْنُ هَاشِمٍ، حَدَّثَنَا بَهْزٌ، حَدَّثَنَا سَلِيمُ بْنُ حَيَّانَ، حَدَّثَنَا سَعِيدُ بْنُ مِينَاءَ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُزَابَنَةِ، وَالْمُحَاقَلَةِ، وَالْمُخَابَرَةِ، وَعَنْ بَيْعِ الثَّمَرَةِ حَتَّى تُشْقِحَ. قَالَ: قُلْتُ لِسَعِيدٍ مَا تُشْقِحُ؟ قَالَ: تَحْمَارُّ، وَتَصْفَارُّ، وَيُؤْكَلُ مِنْهَا.

[3428–85]. (Dar al-Salam 3712) ʿUbaydullāh ibn ʿUmar al-Qawārīrī and Muhammad ibn ʿUbayd al-Ghubarī narrated (ʿUbaydullāh's text):[iii] both said: Ḥammād ibn Zayd narrated; Ayyūb narrated; from Abu al-Zubayr and Saʿīd ibn Mīnā'; from Jābir ibn ʿAbdullāh. He said: **'God's Messenger (peace be upon him) prohibited *muḥāqalah, muzābanah*, *muʿāwamah, mukhābarah,* (one of them said: the *muʿāwamah* means selling for several years), and making an exception, but he made a concession concerning the *ʿarāyā'*.**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، وَمُحَمَّدُ بْنُ عُبَيْدٍ الْغُبَرِيُّ، (وَاللَّفْظُ لِعُبَيْدِ اللهِ) قَالا: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، حَدَّثَنَا أَيُّوبُ، عَنْ أَبِي الزُّبَيْرِ، وَسَعِيدِ بْنِ مِينَاءَ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُحَاقَلَةِ، وَالْمُزَابَنَةِ، وَالْمُعَاوَمَةِ، وَالْمُخَابَرَةِ. – قَالَ أَحَدُهُمَا: بَيْعُ السِّنِينَ هِيَ الْمُعَاوَمَةُ – وَعَنِ الثُّنْيَا. وَرَخَّصَ فِي الْعَرَايَا

[3429–000]. (Dar al-Salam 3713) Abu Bakr ibn Abi Shaybah and ʿAlī ibn Ḥujr narrated: both said: Ismāʿīl (who is Ibn ʿUlayyah) narrated; from Ayyūb; from Abu al-Zubayr; from Jābir; from the Prophet (peace be upon him): **the same text, but he did not mention that *mu ʿāwamah* means selling for several years.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ بْنُ حُجْرٍ، قَالا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ عُلَيَّةَ)، عَنْ أَيُّوبَ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ، غَيْرَ أَنَّهُ لاَ يَذْكُرُ بَيْعُ السِّنِينَ هِيَ الْمُعَاوَمَةُ.

[3430–86]. (Dar al-Salam 3714) Isḥāq ibn Manṣūr narrated to me: ʿUbaydullāh ibn ʿAbd al-Majīd narrated; Rabāḥ ibn Abi Maʿrūf narrated; he said: I heard ʿAṭā’ narrating from Jābir ibn ʿAbdullāh. He said: **‘God’s Messenger (peace be upon him) prohibited leasing land, selling it for years and selling produce until it has ripened.’**

وَحَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عَبْدِ الْمَجِيدِ، حَدَّثَنَا رَبَاحُ بْنُ أَبِي مَعْرُوفٍ قَالَ: سَمِعْتُ عَطَاءً، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ كِرَاءِ الأَرْضِ، وَعَنْ بَيْعِهَا السِّنِينَ، وَعَنْ بَيْعِ الثَّمَرِ حَتَّى يَطِيبَ.

Text Explanation

These hadiths speak of some arrangements concerning the sale of agricultural produce. *Muḥāqalah* and *muzābanah* were explained in the previous chapter. *Mukhābarah* is similar to *muzāraʿah*. They are deals regarding agricultural land whereby a portion of the produce, such as one-third, one-quarter, or some other specified portion is given to one party. *Muzāraʿah* requires the owner to provide the seeds, while in *mukhābarah*, the one who tills the land and looks after it provides the seeds. This is what the majority of our scholars say, and it is the apparent meaning of al-Shāfiʿī's statement, but some of our scholars say that the two are synonymous. The validity of these two arrangements is subject to well-known controversy among early scholars, and we will discuss this in later chapters.

The prohibition of *muʿāwamah* relates to a sale of the produce from trees for two or three years or longer. It is called *muʿawamah*, which is derived from the word *ʿām*, meaning 'year'. It is an invalid and forbidden sale, according to the unanimous view of all scholars. This unanimity, based on these hadiths, is stated by Ibn al-Mundhir and other scholars. The prohibition is due to the fact that the sale involves *gharar*, which means unclarity, because it is a sale of what does not exist, is unknown, undeliverable and not owned by the seller, but God knows best.

Hadith No. 3424 prohibits 'the sale of fruits before their quality has been confirmed and that they must only be sold for dīnār and dirham [i.e., money], with the exception of the *ʿarāyā*'. This means that when the quality of ripening dates has not been confirmed, they cannot be sold in exchange for ripe dates. They should be sold instead for money or in exchange for something else. The prohibition applies only to its exchange for dates. Again, the hadith states the exception of the *ʿarāyā*, in which it is permissible to exchange ripening dates for ripe ones, with the condition stated in the previous chapter.

Hadith No. 3425 mentions the prohibition of selling fruits until they have taste. This again refers to the confirmation of the quality of the dates, making clear that trading is valid only after they are confirmed to be of good quality and edible. In the following two hadiths, this is expressed as colouring, which does not mean becoming red or yellow, but merely starting to change colour and having a hint of red or yellow colour.

In hadith No. 3428, the Prophet prohibits 'making an exception' in a sale transaction. In a hadith related by al-Tirmidhī and others, with an authentic chain of transmission, the Prophet 'prohibited making an exception, unless it is defined'. An exception that makes a sale invalid is that of a seller saying to the buyer: 'I sell you this heap apart from some of it', or 'I sell you these trees, or sheep, or clothes, etc. except for some of them'. Such a sale is invalid because what is excepted is unknown. But if the seller says: 'I sell you these trees except this one, or I sell you this fruit of this tree except one-quarter of it, or this heap except one-third of it, or I sell you this for a thousand dirhams except one, or any similar specified exception', the sale is valid, according to the consensus of scholars. If the vendor sells a heap except a *ṣāʿ* of it, the deal is invalid according to al-Shāfiʿī and Abu Ḥanīfah, but Mālik makes it valid if the exception does not exceed one-third of the heap. In the case of the vendor selling the fruits of a few date trees except, say, ten *ṣāʿs* to be retained by the seller, the deal is invalid according to al-Shāfiʿī, Abu Ḥanīfah and the great majority of scholars. Mālik and some scholars from Madinah, however, say that this is valid if it does not exceed one-third of the total fruits.

Transmission

The chain of transmission of hadith No. 3426 includes: 'Abu al-Walīd al-Makkī narrated from Jābir', while in hadith No. 3428 the reporter from Jābir is Saʿīd ibn Mīnā'. Ibn Abi Ḥātim said that Abu al-Walīd's name is Yasār, but ʿAbd al-Ghanī said that this is wrong. He is indeed Saʿīd ibn

Mīnā' who is mentioned by his clear name in the other hadith. It is properly explained by al-Bukhari in his book, *al-Tārīkh*.

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i. Related by al-Bukhari, 2189 and 2381; al-Nasā'ī, 3888, 4536, 4537 and 4564.

ii. Related by al-Bukhari, 2196; Abu Dāwūd, 3370 and in a shorter version, 3375; Ibn Mājah, 2218.

iii. Related by Abu Dāwūd, 3404; al-Tirmidhī, 1313; al-Nasā'ī, 4648; Ibn Mājah, 2266.

CHAPTER 17

LEASING AGRICULTURAL LAND

[3431–87]. (Dar al-Salam 3715) Abu Kāmil al-Jaḥdarī narrated:[i] Ḥammād (meaning Ibn Zayd) narrated; from Maṭar al-Warrāq; from ʿAṭā'; from Jābir ibn ʿAbdullāh; that **'God's Messenger (peace be upon him) prohibited the renting of agricultural land'.**

وَحَدَّثَنِي أَبُو كَامِلٍ الْجَحْدَرِيُّ، حَدَّثَنَا حَمَّادٌ (يَعْنِي ابْنَ زَيْدٍ)، عَنْ مَطَرٍ الْوَرَّاقِ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ كِرَاءِ الأَرْضِ.

[3432–88]. (Dar al-Salam 3716) ʿAbd ibn Ḥumayd narrated:[ii] Muhammad ibn al-Faḍl (known as ʿĀrim, and who is Abu al-Nuʿmān al-Sudūsī) narrated; Mahdī ibn Maymūn narrated; Maṭar al-Warrāq narrated; from ʿAṭā'; from Jābir ibn ʿAbdullāh. He said: **'God's Messenger (peace be upon him) said: "Whoever has land should cultivate it. If he does not cultivate it himself, he should give it to his brother to cultivate".'**

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ (لَقَبُهُ عَارِمٌ وَهُوَ أَبُو النُّعْمَانِ السَّدُوسِيُّ)، حَدَّثَنَا مَهْدِيُّ بْنُ مَيْمُونٍ، حَدَّثَنَا مَطَرٌ الْوَرَّاقُ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا، فَإِنْ لَمْ يَزْرَعْهَا فَلْيُزْرِعْهَا أَخَاهُ».

[3433–89]. (Dar al-Salam 3717) Al-Ḥakam ibn Mūsā narrated:[iii] Hiql (meaning Ibn Ziyād) narrated; from al-Awzāʿī; from ʿAṭā’; from Jābir ibn ʿAbdullāh. He said: **‘Some of the Prophet’s companions had some surplus land. God’s Messenger (peace be upon him) said: “Whoever has surplus land should cultivate it, or should give it to his brother. If he does not, he should hold on to it”.’**

حَدَّثَنَا الْحَكَمُ بْنُ مُوسَى، حَدَّثَنَا هِقْلٌ (يَعْنِي ابْنَ زِيَادٍ)، عَنِ الأَوْزَاعِيِّ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: كَانَ لِرِجَالٍ فُضُولُ أَرَضِينَ مِنْ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ فَضْلُ أَرْضٍ فَلْيَزْرَعْهَا، أَوْ لِيَمْنَحْهَا أَخَاهُ. فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ.

[3434–90]. (Dar al-Salam 3718) Muhammad ibn Ḥātim narrated to me: Muʿallā ibn Manṣūr al-Rāzī narrated; Khālid narrated; al-Shaybānī reported; from Bukayr ibn al-Akhnas; from ʿAṭā’; from Jābir ibn ʿAbdullāh. He said: **‘God’s Messenger (peace be upon him) has censured taking rent for land, or a share [of its produce]’.**

وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا مُعَلَّى بْنُ مَنْصُورٍ الرَّازِيُّ، حَدَّثَنَا خَالِدٌ، أَخْبَرَنَا الشَّيْبَانِيُّ، عَنْ بُكَيْرِ بْنِ الأَخْنَسِ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُؤْخَذَ لِلأَرْضِ أَجْرٌ أَوْ حَظٌّ.

[3435–91]. (Dar al-Salam 3719) Ibn Numayr narrated:[iv] my father narrated; ʿAbd al-Malik narrated; from ʿAṭā’; from Jābir. He said that God’s Messenger (peace be upon him) said: **‘Whoever has**

agricultural land should cultivate it. If he can not cultivate it and is unable to do so, he should give it to his Muslim brother, but should not rent it to him'.

حَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عَبْدُ الْـمَلِكِ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا. فَإِنْ لَمْ يَسْتَطِعْ أَنْ يَزْرَعَهَا وَعَجَزَ عَنْهَا فَلْيَمْنَحْهَا أَخَاهُ الْـمُسْلِمَ، وَلاَ يُؤَاجِرْهَا إِيَّاهُ».

[3436–92]. (Dar al-Salam 3720) Shaybān ibn Farrūkh narrated:[v] Hammām narrated. He said: **'Sulaymān ibn Mūsā asked ʿAṭā': "Did Jābir ibn ʿAbdullāh narrate to you that the Prophet (peace be upon him) said: 'Whoever has land should cultivate it, or give it to his brother to cultivate it, but should not lease it'." He said: "Yes".'**

وَحَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا هَمَّامٌ قَالَ: سَأَلَ سُلَيْمَانُ بْنُ مُوسَى عَطَاءً فَقَالَ: أَحَدَّثَكَ جَابِرُ بْنُ عَبْدِ اللهِ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا، أَوْ لِيُزْرِعْهَا أَخَاهُ، وَلاَ يُكْرِهَا؟» قَالَ: نَعَمْ.

[3437–93]. (Dar al-Salam 3721) Abu Bakr ibn Abi Shaybah narrated:[vi] Sufyān narrated; from ʿAmr; from Jābir; that **'The Prophet (peace be upon him) prohibited *mukhābarah*'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا سُفْيَانُ، عَنْ عَمْرٍو، عَنْ جَابِرٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْـمُخَابَرَةِ.

[3438–94]. (Dar al-Salam 3722) Ḥajjāj ibn al-Shāʿir narrated to me: ʿUbaydullāh ibn ʿAbd al-Majīd narrated; Salīm ibn Ḥayyān narrated; Saʿīd ibn Mīnā’ narrated. He said: **‘I heard Jābir ibn ʿAbdullāh say that God’s Messenger (peace be upon him) said: “Whoever has some surplus land should cultivate it, or give it to his brother to cultivate it; but should not sell it’. I said to Saʿīd: “What did he mean by not selling it?” Did he mean leasing it?” He said: “Yes”.’**

وَحَدَّثَنِي حَجَّاجُ بْنُ الشَّاعِرِ، حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عَبْدِ الْـمَجِيدِ، حَدَّثَنَا سَلِيمُ بْنُ حَيَّانَ، حَدَّثَنَا سَعِيدُ بْنُ مِينَاءَ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: إِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ كَانَ لَهُ فَضْلُ أَرْضٍ فَلْيَزْرَعْهَا، أَوْ لِيُزْرِعْهَا أَخَاهُ. وَلاَ تَبِيعُوهَا». فَقُلْتُ لِسَعِيدٍ: مَا قَوْلُهُ وَلاَ تَبِيعُوهَا، يَعْنِي الْكِرَاءَ؟ قَالَ: نَعَمْ.

[3439–95]. (Dar al-Salam 3723) Ahmad ibn Yūnus narrated: Zuhayr narrated; Abu al-Zubayr narrated; from Jābir. He said: **‘We used to rent land during God’s Messenger’s lifetime, and we would have a share of grains left in the ears after threshing and something unspecified. God’s Messenger then said: “Whoever has land should cultivate it, or let his brother cultivate it; otherwise, he should leave it”.’**

حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: كُنَّا نُخَابِرُ عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَنُصِيبُ مِنَ الْقِصْرِيِّ، وَمِنْ كَذَا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا، أَوْ فَلْيُحْرِثْهَا أَخَاهُ، وَإِلاَّ فَلْيَدَعْهَا.

[3440–96]. (Dar al-Salam 3724) Abu al-Ṭāhir and Ahmad ibn ʿĪsā narrated to me: both from Ibn Wahb; Ibn ʿĪsā said: ʿAbdullāh ibn Wahb narrated; Hishām ibn Saʿd narrated to me; that Abu al-Zubayr al-Makkī narrated to him. He said: **‘I heard Jābir ibn ʿAbdullāh say: “During God’s Messenger’s time we used to take land in return for one-third or one-fourth [of its produce] and what grows on stream edges”. God’s Messenger (peace be upon him) spoke about this and said: “Whoever has land should cultivate it. If he does not cultivate it, he should give it to his brother. If he does not give it to his brother, he should hold on to it”.’**

حَدَّثَنِي أَبُو الطَّاهِرِ، وَأَحْمَدُ بْنُ عِيسَى، جَمِيعًا عَنِ ابْنِ وَهْبٍ، قَالَ ابْنُ عِيسَى: حَدَّثَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، حَدَّثَنِي هِشَامُ بْنُ سَعْدٍ، أَنَّ أَبَا الزُّبَيْرِ الْـمَكِّيَّ حَدَّثَهُ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: كُنَّا فِي زَمَانِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَأْخُذُ الأَرْضَ بِالثُّلُثِ أَوِ الرُّبُعِ، بِالْـمَاذِيَانَاتِ، فَقَامَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي ذَلِكَ فَقَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا. فَإِنْ لَمْ يَزْرَعْهَا فَلْيَمْنَحْهَا أَخَاهُ. فَإِنْ لَمْ يَمْنَحْهَا أَخَاهُ فَلْيُمْسِكْهَا».

[3441–97]. (Dar al-Salam 3725) Muhammad ibn al-Muthannā narrated: Yaḥyā ibn Ḥammād narrated; Abu ʿAwānah narrated; from Sulaymān; Abu Sufyān narrated; from Jābir. He said: I heard the Prophet (peace be upon him) say: **‘Whoever has [surplus] land should gift or lend it’.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا يَحْيَى بْنُ حَمَّادٍ، حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ سُلَيْمَانَ، حَدَّثَنَا أَبُو سُفْيَانَ، عَنْ جَابِرٍ قَالَ: سَمِعْتُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَهَبْهَا، أَوْ لِيُعِرْهَا».

[3442–98].[vii] Ḥajjāj ibn al-Shāʿir narrated to me: Abu al-Jawwāb narrated; ʿAmmār ibn Ruzayq narrated; from al-Aʿmash; with the same chain of transmission, but he said: **‘He should cultivate it or give it someone to cultivate’.**

وَحَدَّثَنِيهِ حَجَّاجُ بْنُ الشَّاعِرِ، حَدَّثَنَا أَبُو الْجَوَّابِ، حَدَّثَنَا عَمَّارُ بْنُ رُزَيْقٍ، عَنِ الأَعْمَشِ، بِهَذَا الإِسْنَادِ غَيْرَ أَنَّهُ قَالَ: «فَلْيَزْرَعْهَا، أَوْ فَلْيُزْرِعْهَا رَجُلاً».

[3443–99]. (Dar al-Salam 3726) Ḥārūn ibn Saʿīd al-Aylī narrated to me: Ibn Wahb narrated; ʿAmr (who is Ibn al-Ḥārith) reported to me; that Bukayr narrated to him; that ʿAbdullāh ibn Abu Salamah narrated to him; from al-Nuʿmān ibn Abi ʿAyyāsh; from Jābir ibn ʿAbdullāh; that **‘God’s Messenger (peace be upon him) prohibited renting land’.**

Bukayr said: and Nāfiʿ narrated to me that he heard Ibn ʿUmar say: **‘We used to rent our land, but we stopped doing so when we heard the hadith narrated by Rāfiʿ ibn Khadīj’.**

وَحَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي عَمْرٌو (وَهُوَ ابْنُ الْحَارِثِ)، أَنَّ بُكَيْرًا حَدَّثَهُ، أَنَّ عَبْدَ اللهِ بْنَ أَبِي سَلَمَةَ حَدَّثَهُ، عَنِ النُّعْمَانِ بْنِ أَبِي عَيَّاشٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ كِرَاءِ الأَرْضِ.

قَالَ بُكَيْرٌ: وَحَدَّثَنِي نَافِعٌ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ يَقُولُ: كُنَّا نُكْرِي أَرْضَنَا، ثُمَّ تَرَكْنَا ذَلِكَ حِينَ سَمِعْنَا حَدِيثَ رَافِعِ بْنِ خَدِيجٍ.

[3444–100]. (Dar al-Salam 3727) Yaḥyā ibn Yaḥyā narrated: Abu Khaythamah reported; from Abu al-Zubayr; from Jābir. He said:

‘God’s Messenger (peace be upon him) prohibited leasing uncultivated land for two or three years’.

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا أَبُو خَيْثَمَةَ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الأَرْضِ الْبَيْضَاءِ سَنَتَيْنِ أَوْ ثَلاَثًا.

[3445–101]. (Dar al-Salam 3728) Saʿīd ibn Manṣūr, Abu Bakr ibn Abi Shaybah, ʿAmr al-Nāqid and Zuhayr ibn Ḥarb narrated:[viii] they said: Sufyān ibn ʿUyaynah narrated; from Ḥumayd al-Aʿraj; from Sulaymān ibn ʿAtīq; from Jābir that **‘the Prophet (peace be upon him) prohibited selling for several years’.**

In Ibn Abi Shaybah’s narration: **‘prohibited selling the produce for several years’.**

وَحَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ، وَأَبُو بَكْرِ بْنُ شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَزُهَيْرُ بْنُ حَرْبٍ قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ حُمَيْدٍ الأَعْرَجِ، عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ، عَنْ جَابِرٍ قَالَ: نَهَى النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ السِّنِينَ. وَفِي رِوَايَةِ ابْنِ أَبِي شَيْبَةَ عَنْ بَيْعِ الثَّمَرِ سِنِينَ.

[3446–102]. (Dar al-Salam 3729) Ḥasan ibn ʿAlī al-Ḥulwānī narrated:[ix] Abu Tawbah narrated; Muʿāwiyah narrated; from Yaḥyā ibn Abi Kathīr; from Abu Salamah ibn ʿAbd al-Raḥmān; from Abu Hurayrah. He said**: ‘God’s Messenger (peace be upon him) said: “Whoever has land should cultivate it or give it to his brother. If he does not want to, he should retain his land”.’**

حَدَّثَنَا حَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ، حَدَّثَنَا أَبُو تَوْبَةَ، حَدَّثَنَا مُعَاوِيَةُ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ:

«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا، أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أَبَى فَلْيُمْسِكْ أَرْضَهُ».

[3447–103]. (Dar al-Salam 3730) Al-Ḥasan al-Ḥulwānī narrated:[x] Abu Tawbah narrated; Muʿāwiyah narrated; from Yaḥyā ibn Abi Kathīr; that Yazīd ibn Nuʿaym reported to him; that Jābir ibn ʿAbdullāh told him that he heard **'God's Messenger prohibiting *muzābanah* and *ḥuqūl*'. Jābir ibn ʿAbdullāh said: "*Muzābanah* means selling dates on the trees for ripe dates, and *ḥuqūl* means renting land".'**

وَحَدَّثَنَا الْحَسَنُ الْحُلْوَانِيُّ، حَدَّثَنَا أَبُو تَوْبَةَ، حَدَّثَنَا مُعَاوِيَةُ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، أَنَّ يَزِيدَ بْنَ نُعَيْمٍ أَخْبَرَهُ، أَنَّ جَابِرَ بْنَ عَبْدِ اللهِ أَخْبَرَهُ، أَنَّهُ سَمِعَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَنْهَى عَنِ الْـمُزَابَنَةِ وَالْحُقُولِ. فَقَالَ جَابِرُ بْنُ عَبْدِ اللهِ: الْـمُزَابَنَةُ الثَّمَرُ بِالتَّمْرِ، وَالْحُقُولُ كِرَاءُ الأَرْضِ.

[3448–104]. (Dar al-Salam 3731) Qutaybah ibn Saʿīd narrated:[xi] Yaʿqūb (meaning ibn ʿAbd al-Raḥmān al-Qāriy) narrated; from Suhayl ibn Abi Ṣāliḥ; from his father; from Abu Hurayrah. He said: **'God's Messenger (peace be upon him) prohibited *muḥāqalah* and *muzābanah'*.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا يَعْقُوبُ (يَعْنِي ابْنَ عَبْدِ الرَّحْمَنِ الْقَارِيَّ)، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْـمُحَاقَلَةِ وَالْـمُزَابَنَةِ.

[3449–105]. (Dar al-Salam 3732) Abu al-Ṭāhir narrated to me:[xii] Ibn Wahb reported; Mālik ibn Anas reported to me; from Dāwūd

ibn al-Ḥuṣayn; that Abu Sufyān, Ibn Abi Ahmad's ally, reported to him; that he heard Abu Saʿīd al-Khudrī say: **'God's Messenger (peace be upon him) prohibited *muzābanah* and *muḥāqalah*. *Muzābanah* means buying the dates when they are still on top of the trees, and *muḥāqalah* means renting land'.**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي مَالِكُ بْنُ أَنَسٍ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، أَنَّ أَبَا سُفْيَانَ، مَوْلَى ابْنِ أَبِي أَحْمَدَ، أَخْبَرَهُ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُزَابَنَةِ وَالْمُحَاقَلَةِ. وَالْمُزَابَنَةُ اشْتِرَاءُ الثَّمَرِ فِي رُءُوسِ النَّخْلِ. وَالْمُحَاقَلَةُ كِرَاءُ الأَرْضِ.

[3450–106]. (Dar al-Salam 3733) Yaḥyā ibn Yaḥyā and Abu al-Rabīʿ al-ʿAtakī narrated:[xiii] Ḥammād ibn Zayd (Abu al-Rabīʿ said: 'narrated' and Yaḥyā said: 'reported'); from ʿAmr. He said: **'I heard Ibn ʿUmar say: "We used not to see anything wrong with renting land for a portion of its produce until the year before last when Rāfiʿ claimed that the Prophet (peace be upon him) prohibited it".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو الرَّبِيعِ الْعَتَكِيُّ. (قَالَ أَبُو الرَّبِيعِ حَدَّثَنَا وَقَالَ يَحْيَى أَخْبَرَنَا) حَمَّادُ بْنُ زَيْدٍ، عَنْ عَمْرٍو قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: كُنَّا لاَ نَرَى بِالْخِبْرِ بَأْسًا، حَتَّى كَانَ عَامُ أَوَّلَ، فَزَعَمَ رَافِعٌ أَنَّ نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْهُ.

[3451–107]. (Dar al-Salam 3734) Abu Bakr ibn Abi Shaybah narrated: Sufyān narrated [H]. Also, ʿAlī ibn Ḥujr and Ibrāhīm ibn Dīnār narrated to me; both said: Ismāʿīl (who is Ibn ʿUlayyah) narrated; from Ayyūb [H]. And, Isḥāq ibn Ibrāhīm narrated; Wakīʿ

reported; Sufyān narrated; all of them from ʿAmr ibn Dīnār; with the same chain of transmission: **the same text, adding in Ibn ʿUyaynah's narration: 'We abandoned it for that'.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا سُفْيَانُ، ح. وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ، وَإِبْرَاهِيمُ بْنُ دِينَارٍ قَالا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ عُلَيَّةَ)، عَنْ أَيُّوبَ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا وَكِيعٌ، حَدَّثَنَا سُفْيَانُ، كُلُّهُمْ عَنْ عَمْرِو بْنِ دِينَارٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. وَزَادَ فِي حَدِيثِ ابْنِ عُيَيْنَةَ: فَتَرَكْنَاهُ مِنْ أَجْلِهِ.

[3452–108]. (Dar al-Salam 3735) ʿAlī ibn Ḥujr narrated to me: Ismāʿīl narrated; from Ayyūb; from Abu al-Khalīl; from Mujāhid. He said that Ibn ʿUmar said: **'Rāfiʿ deprived us of the benefit of our land'.**

وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ، حَدَّثَنَا إِسْمَاعِيلُ، عَنْ أَيُّوبَ، عَنْ أَبِي الْخَلِيلِ، عَنْ مُجَاهِدٍ قَالَ: قَالَ ابْنُ عُمَرَ: لَقَدْ مَنَعَنَا رَافِعٌ نَفْعَ أَرْضِنَا.

[3453–109]. (Dar al-Salam 3736) Yaḥyā ibn Yaḥyā narrated:[xiv] Yazīd ibn Zurayʿ reported; from Ayyūb; from Nāfiʿ that **'Ibn ʿUmar used to rent his farms during the Prophet's lifetime and during the reigns of Abu Bakr, ʿUmar, ʿUthmān and for some time of Muʿāwiyah's reign. Towards the end of Muʿāwiyah's reign, he learnt that Rāfiʿ ibn Khadīj narrated a prohibition by the Prophet. He visited him, and I was with him. He asked him and he [i.e., Rāfiʿ] said: "God's Messenger (peace be upon him) used to prohibit renting farms". Ibn ʿUmar did not do it after that. When he was subsequently asked about it, he would say:**

“Rāfiʿ ibn Khadīj claimed that God’s Messenger (peace be upon him) prohibited it”.’

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا يَزِيدُ بْنُ زُرَيْعٍ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، أَنَّ ابْنَ عُمَرَ كَانَ يُكْرِي مَزَارِعَهُ عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَفِي إِمَارَةِ أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ وَصَدْرًا مِنْ خِلاَفَةِ مُعَاوِيَةَ، حَتَّى بَلَغَهُ فِي آخِرِ خِلاَفَةِ مُعَاوِيَةَ، أَنَّ رَافِعَ بْنَ خَدِيجٍ يُحَدِّثُ فِيهَا بِنَهْيٍ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَدَخَلَ عَلَيْهِ وَأَنَا مَعَهُ فَسَأَلَهُ فَقَالَ: كَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَنْهَى عَنْ كِرَاءِ الْمَزَارِعِ. فَتَرَكَهَا ابْنُ عُمَرَ بَعْدُ. وَكَانَ إِذَا سُئِلَ عَنْهَا بَعْدُ قَالَ: زَعَمَ رَافِعُ بْنُ خَدِيجٍ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْهَا.

[3454–000]. (Dar al-Salam 3737) Abu al-Rabīʿ and Abu Kāmil narrated: both said: Ḥammād narrated [H]. Also, ʿAlī ibn Ḥujr narrated to me; Ismāʿīl narrated; both from Ayyūb; with the same chain of transmission: **the same text, adding in [Ismāʿīl] ibn ʿUlayyah’s narration: ‘Ibn ʿUmar subsequently abandoned giving it on rent’.**

وَحَدَّثَنَا أَبُو الرَّبِيعِ، وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ، ح. وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ، حَدَّثَنَا إِسْمَاعِيلُ، كِلاَهُمَا عَنْ أَيُّوبَ، بِهَذَا الإِسْنَادِ: مِثْلَهُ، وَزَادَ فِي حَدِيثِ ابْنِ عُلَيَّةَ قَالَ: فَتَرَكَهَا ابْنُ عُمَرَ بَعْدَ ذَلِكَ، فَكَانَ لاَ يُكْرِيهَا.

[3455–110]. (Dar al-Salam 3738) Ibn Numayr narrated: my father narrated; ʿUbaydullāh narrated; from Nāfiʿ. He said: **‘I went with Ibn ʿUmar to see Rāfiʿ ibn Khadīj, visiting him at al-Balāṭ. He [i.e., Rāfiʿ] told him that God’s Messenger (peace be upon him) prohibited renting farmland’.**

وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ قَالَ: ذَهَبْتُ مَعَ ابْنِ عُمَرَ إِلَى رَافِعِ بْنِ خَدِيجٍ، حَتَّى أَتَاهُ بِالْبَلاَطِ، فَأَخْبَرَهُ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ كِرَاءِ الْمَزَارِعِ.

[3456–000]. (Dar al-Salam 3739) Ibn Abi Khalaf and Ḥajjāj ibn al-Shāʿir narrated to me: both said: Zakariyyā' ibn ʿAdiy narrated; ʿUbaydullāh ibn ʿAmr reported to us; from Zayd; from al-Ḥakam; from Nāfiʿ; from Ibn ʿUmar that he went to see Rāfiʿ. **He mentioned the same hadith from the Prophet (peace be upon him).**

وَحَدَّثَنِي ابْنُ أَبِي خَلَفٍ، وَحَجَّاجُ بْنُ الشَّاعِرِ، قَالا: حَدَّثَنَا زَكَرِيَّاءُ بْنُ عَدِيٍّ، أَخْبَرَنَا عُبَيْدُ اللهِ بْنُ عَمْرٍو، عَنْ زَيْدٍ، عَنِ الْحَكَمِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّهُ أَتَى رَافِعًا، فَذَكَرَ هَذَا الْحَدِيثَ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3457–111]. (Dar al-Salam 3740) Muhammad ibn al-Muthannā narrated: Ḥusayn (meaning Ibn Ḥasan ibn Yasār) narrated; Ibn ʿAwn narrated; from Nāfiʿ; that Ibn ʿUmar used to let out land. He added: **'He was informed of a hadith narrated by Rāfiʿ ibn Khadīj and he took me to see him. He reported from some of his uncles mentioning that "the Prophet (peace be upon him) prohibited renting land". He said: "Ibn ʿUmar stopped that and no longer rented it".'**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا حُسَيْنٌ (يَعْنِي ابْنَ حَسَنِ بْنِ يَسَارٍ)، حَدَّثَنَا ابْن عَوْنٍ، عَنْ نَافِعٍ، أَنَّ ابْنَ عُمَرَ، كَانَ يَأْجُرُ الأَرْضَ. قَالَ: فَنُبِّئَ حَدِيثًا عَنْ رَافِعِ بْنِ خَدِيجٍ. قَالَ: فَانْطَلَقَ

بِي مَعَهُ إِلَيْهِ. قَالَ: فَذَكَرَ عَنْ بَعْضِ عُمُومَتِهِ، ذَكَرَ فِيهِ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ نَهَى عَنْ كِرَاءِ الأَرْضِ. قَالَ: فَتَرَكَهُ ابْنُ عُمَرَ فَلَمْ يَأْجُرْهُ.

[3458–000].[xv] Muhammad ibn Ḥātim narrated: Yazīd ibn Ḥārūn narrated; Ibn ʿAwn narrated; with the same chain of transmission: **the same text, but he said: 'He narrated from some of his uncles from the Prophet (peace be upon him)'.**

وَحَدَّثَنِيهِ مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، حَدَّثَنَا ابْنُ عَوْنٍ، بِهَذَا الإِسْنَادِ، وَقَالَ: فَحَدَّثَهُ عَنْ بَعْضِ عُمُومَتِهِ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3459–112]. (Dar al-Salam 3741) ʿAbd al-Malik ibn Shuʿayb ibn al-Layth ibn Saʿd narrated to me:[xvi] my father narrated to me; from my grandfather; ʿUqayl ibn Khālid narrated to me; from Ibn Shihāb; that he said: **'Sālim ibn ʿAbdullāh reported to me that ʿAbdullāh ibn ʿUmar used to rent his lands, until he was informed that Rāfiʿ ibn Khadīj al-Anṣārī used to order people not to rent land. ʿAbdullāh met him and said: "Ibn Khadīj! What do you narrate from God's Messenger (peace be upon him) about renting land?" Rāfiʿ ibn Khadīj said to ʿAbdullāh: "I heard my two uncles (who both took part in the Battle of Badr) narrating to our people that God's Messenger (peace be upon him) prohibited renting land". ʿAbdullāh said: "I was aware that land used to be let during the Prophet's lifetime. Then ʿAbdullāh feared that God's Messenger might have subsequently ordered something and he was unaware of it. He stopped renting his land".'**

وَحَدَّثَنِي عَبْدُ الْـمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ، حَدَّثَنِي أَبِي، عَنْ جَدِّي، حَدَّثَنِي عُقَيْلُ بْنُ خَالِدٍ، عَنِ ابْنِ شِهَابٍ، أَنَّهُ قَالَ: أَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللهِ، أَنَّ عَبْدَ اللهِ بْنَ عُمَرَ، كَانَ يُكْرِي أَرَضِيهِ، حَتَّى بَلَغَهُ أَنَّ رَافِعَ بْنَ خَدِيجٍ الأَنْصَارِيَّ كَانَ يَنْهَى عَنْ كِرَاءِ الأَرْضِ. فَلَقِيَهُ عَبْدُ اللهِ فَقَالَ: يَا ابْنَ خَدِيجٍ، مَاذَا تُحَدِّثُ عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي كِرَاءِ الأَرْضِ؟ قَالَ رَافِعُ بْنُ خَدِيجٍ لِعَبْدِ اللهِ: سَمِعْتُ عَمَّيَّ - وَكَانَا قَدْ شَهِدَا بَدْرًا - يُحَدِّثَانِ أَهْلَ الدَّارِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ كِرَاءِ الأَرْضِ. قَالَ عَبْدُ اللهِ: لَقَدْ كُنْتُ أَعْلَمُ فِي عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّ الأَرْضَ تُكْرَى. ثُمَّ خَشِيَ عَبْدُ اللهِ أَنْ يَكُونَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَحْدَثَ فِي ذَلِكَ شَيْئًا لَمْ يَكُنْ عَلِمَهُ، فَتَرَكَ كِرَاءَ الأَرْضِ.

Text Explanation

These numerous hadiths speak about renting agricultural land. Some mention that the Prophet prohibited such renting, and some say that he ordered that if the owner is unable to cultivate his land, he should either give it freely to someone else to cultivate or hold on to it. Other hadiths order that such land may be gifted or given as a loan. In some hadiths, the prohibition applies to selling the produce of a land for several years in advance. Then we have the hadiths that mention that Ibn ʿUmar used to let out his farm land until he heard of a hadith narrated by Rāfiʿ ibn Khadīj. He checked with Rāfiʿ and when the latter confirmed it, Ibn ʿUmar stopped doing so. Another hadith narrated by Ḥanẓalah ibn Qays [which will be narrated in the next chapter] Rāfiʿ ibn Khadīj mentions that renting land for a specified amount of money is acceptable. He explained that during the Prophet's time, people used to rent it for some of its produce, but because this is unspecified and unknown, the Prophet prohibited it.

What these hadiths mean is that people used to give agricultural land to someone to cultivate, and he would provide the seeds. They stipulated that the owner would take what grows on the edges of irrigating streams, or on a

particular piece of the land, while the rest of the produce would belong to the lessee. This was prohibited, because it is unclear, given that some parts of the land would end up with nothing, and this could belong to either party.

Scholars hold different views concerning renting agricultural land. Ṭāwūs and al-Ḥasan al-Baṣrī say that it is not permissible in any case, whether it is rented in exchange for food, or money or a portion of its produce. This view is based on the fact that the hadith prohibiting renting land is expressed in general terms. On the other hand, al-Shāfiʿī, Abu Ḥanīfah and many others say that it is permissible to rent land in exchange for money, food, clothes or anything else, whether it is of the same type as what is planted or different, but it is not permissible to rent it against a portion of its produce, such as one-quarter or one-third, which is known as *mukhābarah*. It is also not permissible to stipulate that the lessee cultivates a particular portion of the land. Rabīʿah said that it is permissible to rent agricultural land for money only. Mālik said that it is permissible for money or anything else, except food. Ahmad, Abu Yūsuf, Muhammad ibn al-Ḥasan, some Mālikī scholars and others say that it is permissible to let agricultural land for money or for one-third or one-quarter of its produce or some other arrangement. This view is endorsed by Ibn Sharīḥ, Ibn Khuzaymah, al-Khaṭṭābī and others among the scrupulous scholars of our Shāfiʿī School. This is the view of choice and we shall explain it in the next Book, God willing.

We have already mentioned the argument of Ṭāwūs and al-Ḥasan. On the other hand, al-Shāfiʿī and scholars of the same view rely on the clear text narrated by Rāfiʿ ibn Khadīj and Thābit ibn al-Ḍaḥḥāk who were among the earliest to speak of the permissibility of renting for money or a specified rent. They understand the hadiths that mention the prohibition in two ways: 1) what is prohibited is renting the land for what grows on its edges or on a particular part of the land, or for a portion of its produce, as explained by the narrators of these hadiths; or 2) that they mean only discouragement and to suggest lending the land. This is the same as

discouraging sales lacking clarity, resorting to giving things as gifts. It is necessary to adopt these two explanations or one of them so as to reconcile the hadiths. The second understanding is referred to by al-Bukhari and others, and its meaning is reported from Ibn ʿAbbās, but God knows best.

In hadith No. 3455, Ibn ʿUmar is said to have visited Rāfiʿ ibn Khadīj at al-Balāṭ. This used to be a well-known paved and tiled area in Madinah, close to the Prophet's mosque.

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i. Related by al-Nasā'ī, 3887.
ii. Related by al-Nasā'ī, 3886; Ibn Mājah, 2454.
iii. Related by al-Bukhari, 2340 and 2632; al-Nasā'ī, 3885; Ibn Mājah, 2451.
iv. Related by al-Nasā'ī, 3883 and 3884.
v. Related by al-Nasā'ī, 3890.
vi. Related by al-Nasā'ī in a longer version, 3931.
vii. In Dar al-Salam's edition, this hadith is attached to the one before it.
vii. Related by Abu Dāwūd in a longer and similar version, 3774; al-Nasā'ī, 4544 and 4641; Ibn Mājah, 2218.
ix. Related by al-Bukhari, 2341; Ibn Mājah, 2452.
x. Related by al-Nasā'ī, 3891.
xi. Related by al-Tirmidhī, 1224.
xii. Related by al-Bukhari, 2186; Ibn Mājah in a shorter version, 2455.
xiii. Related by Abu Dāwūd, 3389; al-Nasā'ī, 3926, 3927 and 3298; Ibn Mājah, 2450.
xiv. Related by al-Bukhari in a shorter version, 2285 and also 2343 and 2344; al-Nasā'ī, 3920, 3921, 3922, 3923 and 3924; Ibn Mājah, 2453.
xv. In Dar al-Salam's edition, this hadith is attached to the one before it.
xvi. Related by al-Nasā'ī, 3913.

CHAPTER 18

RENTING LAND FOR FOOD

[3460–113]. (Dar al-Salam 3742) ʿAlī ibn Ḥujr al-Saʿdī and Yaʿqūb ibn Ibrāhīm narrated to me:[i] both said: Ismāʿīl (who is Ibn ʿUlayyah) narrated; from Ayyūb; from Yaʿlā ibn Ḥakīm; from Sulaymān ibn Yasār; from Rāfiʿ ibn Khadīj. He said: **'We used to have *muḥāqalah* arrangements for our land during God's Messenger's lifetime, letting the land for one-third or one-fourth [of its produce] or for a specified amount of it. One day, one of my uncles came to us and said: God's Messenger prohibited us something that was of benefit to us, but obeying God and His Messenger is of greater benefit to us. He has prohibited us letting the land for one-third, one-fourth or a specified quantity of its produce. He has ordered the owner of the land to cultivate it or let someone else cultivate it, and he disliked its being rented and other arrangements'.**

وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، وَيَعْقُوبُ بْنُ إِبْرَاهِيمَ، قَالا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ عُلَيَّةَ)، عَنْ أَيُّوبَ، عَنْ يَعْلَى بْنِ حَكِيمٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: كُنَّا نُحَاقِلُ الأَرْضَ عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَنُكْرِيهَا بِالثُّلُثِ وَالرُّبُعِ، وَالطَّعَامِ الْـمُسَمَّى. فَجَاءَنَا ذَاتَ يَوْمٍ رَجُلٌ مِنْ عُمُومَتِي فَقَالَ: نَهَانَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ أَمْرٍ كَانَ لَنَا نَافِعًا. وَطَوَاعِيَةُ اللهِ وَرَسُولِهِ أَنْفَعُ لَنَا. نَهَانَا أَنْ نُحَاقِلَ بِالأَرْضِ

فَنُكْرِيَهَا عَلَى الثُّلُثِ وَالرُّبُعِ، وَالطَّعَامِ الْمُسَمَّى. وَأَمَرَ رَبَّ الأَرْضِ أَنْ يَزْرَعَهَا أَوْ يُزْرِعَهَا، وَكَرِهَ كِرَاءَهَا وَمَا سِوَى ذَلِكَ.

[3461–000]. (Dar al-Salam 3743) Yaḥyā ibn Yaḥyā narrated: Ḥammād ibn Zayd narrated; from Ayyūb; he said: Yaʿlā ibn Ḥakīm wrote to me; he said: I heard Sulaymān ibn Yasār narrating from Rāfiʿ ibn Khadīj. He said: **'We used to have *muḥāqalah* arrangements for our land, letting it for one-third or one-fourth…'. He added the same text as Ibn ʿUlayyah's narration.**

وَحَدَّثَنَاهُ يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، قَالَ كَتَبَ إِلَيَّ يَعْلَى بْنُ حَكِيمٍ قَالَ: سَمِعْتُ سُلَيْمَانَ بْنَ يَسَارٍ، يُحَدِّثُ عَنْ رَافِعِ بْنِ خَدِيجٍ، قَالَ: كُنَّا نُحَاقِلُ بِالأَرْضِ فَنُكْرِيهَا عَلَى الثُّلُثِ وَالرُّبُعِ. ثُمَّ ذَكَرَ بِمِثْلِ حَدِيثِ ابْنِ عُلَيَّةَ.

Yaḥyā ibn Ḥabīb narrated: Khālid ibn al-Ḥārith narrated [H]. Also, ʿAmr ibn ʿAlī narrated; ʿAbd al-ʿAlā' narrated [H]. And, Isḥāq ibn Ibrāhīm narrated; ʿAbdah reported; all of them from Ibn Abi ʿArūbah; from Yaʿlā ibn Ḥakīm; with the same chain of transmission: **the same text.**

وَحَدَّثَنَا يَحْيَى بْنُ حَبِيبٍ، حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ، ح. وَحَدَّثَنَا عَمْرُو بْنُ عَلِيٍّ، حَدَّثَنَا عَبْدُ الأَعْلَى، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عَبْدَةُ، كُلُّهُمْ عَنِ ابْنِ أَبِي عَرُوبَةَ، عَنْ يَعْلَى بْنِ حَكِيمٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3462–000]. (Dar al-Salam 3744) Abu al-Ṭāhir narrated to me: Ibn Wahb reported; Jarīr ibn Ḥāzim reported to me; from Yaʿlā ibn Ḥakīm; with the same chain of transmission; from Rāfiʿ ibn

Khadīj; from the Prophet (peace be upon him): **the same text, but he did not say 'from some of my uncles'.**

وَحَدَّثَنِيهِ أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ، عَنْ يَعْلَى بْنِ حَكِيمٍ، بِهَذَا الإِسْنَادِ، عَنْ رَافِعِ بْنِ خَدِيجٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. وَلَمْ يَقُلْ عَنْ بَعْضِ عُمُومَتِهِ.

[3463–114]. (Dar al-Salam 3745) Isḥāq ibn Manṣūr narrated to me:[ii] Abu Mushir reported; Yaḥyā ibn Ḥamzah narrated to me; Abu ʿAmr al-Awzāʿī narrated to me; from Abu al-Najāshī, Rāfiʿ ibn Khadīj's *mawlā*; from Rāfiʿ; that Ẓuhayr ibn Rāfiʿ (who is his uncle). He [meaning Rāfiʿ ibn Khadīj] said: **'Ẓuhayr came to me and said that God's Messenger (peace be upon him) prohibited something that has been of benefit to us. I said: "What is that? Whatever God's Messenger (peace be upon him) says is right." He said: "He [meaning the Prophet] asked me: 'what do you do with your farm land?' I said: 'We rent them, Messenger of God, for whatever is produced on the banks of streams or for a number of *wusqs* of dates or barley'. He said: 'Do not do that. Cultivate your land, or give it to someone to cultivate, or hold on to it'."'**

حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا أَبُو مُسْهِرٍ، حَدَّثَنِي يَحْيَى بْنُ حَمْزَةَ، حَدَّثَنِي أَبُو عَمْرٍو الأَوْزَاعِيُّ، عَنْ أَبِي النَّجَاشِيِّ، مَوْلَى رَافِعِ بْنِ خَدِيجٍ، عَنْ رَافِعٍ، أَنَّ ظُهَيْرَ بْنَ رَافِعٍ (وَهُوَ عَمُّهُ) قَالَ: أَتَانِي ظُهَيْرٌ فَقَالَ: لَقَدْ نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ أَمْرٍ كَانَ بِنَا رَافِقًا. فَقُلْتُ: وَمَا ذَاكَ؟ مَا قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَهُوَ حَقٌّ. قَالَ: سَأَلَنِي كَيْفَ تَصْنَعُونَ بِمَحَاقِلِكُمْ؟ فَقُلْتُ: نُؤَاجِرُهَا يَا رَسُولَ اللهِ عَلَى الرَّبِيعِ، أَوِ الأَوْسُقِ مِنَ التَّمْرِ أَوِ الشَّعِيرِ. قَالَ: «فَلاَ تَفْعَلُوا. ازْرَعُوهَا، أَوْ أَزْرِعُوهَا، أَوْ أَمْسِكُوهَا».

[3464–000]. (Dar al-Salam 3746) Muhammad ibn Ḥātim narrated: ʿAbd al-Raḥmān ibn Mahdī narrated; from ʿIkrimah ibn ʿAmmār; from Abu al-Najāshī; from Rāfiʿ; from the Prophet: **the same text, but he did not mention: 'from his uncle Ẓuhayr'.**

حَدَّثَنَا مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ، عَنْ أَبِي النَّجَاشِيِّ، عَنْ رَافِعٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِهَذَا، وَلَمْ يَذْكُرْ عَنْ عَمِّهِ ظُهَيْرٍ.

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i. Related by al-Bukhari, 2346 and 2347; Abu Dāwūd, 3395 and 3396; al-Nasā'ī, 3904, 3905, 3906, 3907, 3918 and 3919; Ibn Mājah in a shorter version, 2465.

ii. Related by al-Bukhari, 2339; al-Nasā'ī, 3933; Ibn Mājah, 2459.

CHAPTER 19

RENTING LAND FOR MONEY

[3465–115]. (Dar al-Salam 3747) Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik; from Rabīʿah ibn Abu ʿAbd al-Raḥmān; from Ḥanẓalah ibn Qays; that he asked Rāfiʿ ibn Khadīj about renting land. He said: **'God's Messenger (peace be upon him) prohibited renting land'. I said: "[Even] for gold and silver?" He said: "As for gold and silver, it is acceptable".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ حَنْظَلَةَ بْنِ قَيْسٍ، أَنَّهُ سَأَلَ رَافِعَ بْنَ خَدِيجٍ عَنْ كِرَاءِ الأَرْضِ، فَقَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ كِرَاءِ الأَرْضِ. قَالَ. فَقُلْتُ أَبِالذَّهَبِ وَالْوَرِقِ؟ فَقَالَ أَمَّا بِالذَّهَبِ وَالْوَرِقِ فَلاَ بَأْسَ بِهِ.

[3466–116]. (Dar al-Salam 3748) Isḥāq narrated: ʿĪsā ibn Yūnus reported; al-Awzāʿī narrated; from Rabīʿah ibn Abi ʿAbd al-Raḥmān; Ḥanẓalah ibn Qays al-Anṣārī narrated to me. He said: **'I asked Rāfiʿ ibn Khadīj about renting land for gold and silver. He said: "There is nothing wrong with it. During the Prophet's lifetime, people used to rent land in return for what is produced on the edges and heads of streams and portions of produce. This part may be ruined and that part remained safe, or this remained safe and that ruined. This was the only type of rent**

people used at the time. Hence, the Prophet prohibited it. When it [i.e., the rent] is a specified and guaranteed sum, it is acceptable”.’

حَدَّثَنَا إِسْحَاقُ، أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، حَدَّثَنَا الأَوْزَاعِيُّ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، حَدَّثَنِي حَنْظَلَةُ بْنُ قَيْسٍ الأَنْصَارِيُّ قَالَ: سَأَلْتُ رَافِعَ بْنَ خَدِيجٍ عَنْ كِرَاءِ الأَرْضِ، بِالذَّهَبِ وَالْوَرِقِ، فَقَالَ: لا بَأْسَ بِهِ. إِنَّمَا كَانَ النَّاسُ يُؤَاجِرُونَ عَلَى عَهْدِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى الْـمَاذِيَانَاتِ، وَأَقْبَالِ الْجَدَاوِلِ، وَأَشْيَاءَ مِنَ الزَّرْعِ. فَيَهْلِكُ هَذَا وَيَسْلَمُ هَذَا. وَيَسْلَمُ هَذَا وَيَهْلِكُ هَذَا. فَلَمْ يَكُنْ لِلنَّاسِ كِرَاءٌ إِلاَّ هَذَا، فَلِذَلِكَ زُجِرَ عَنْهُ. فَأَمَّا شَىْءٌ مَعْلُومٌ مَضْمُونٌ، فَلاَ بَأْسَ بِهِ.

[3467–117]. (Dar al-Salam 3749–3750) ʿAmr al-Nāqid narrated: Sufyān ibn ʿUyaynah narrated; from Yaḥyā ibn Saʿīd; from Ḥanẓalah al-Zuraqī; that he heard Rāfiʿ ibn Khadīj say: **‘We owned the largest farm land among the Anṣār, and we used to let land on condition that this piece is for us and that piece is for them. One piece may produce in plenty and one may not. [The Prophet] prohibited us, but as for renting for silver [i.e., money], he did not prohibit us’.**

حَدَّثَنَا عَمْرٌو النَّاقِدُ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ حَنْظَلَةَ الزُّرَقِيِّ أَنَّهُ سَمِعَ رَافِعَ بْنَ خَدِيجٍ يَقُولُ: كُنَّا أَكْثَرَ الأَنْصَارِ حَقْلاً. قَالَ: كُنَّا نُكْرِي الأَرْضَ عَلَى أَنَّ لَنَا هَذِهِ وَلَهُمْ هَذِهِ. فَرُبَّمَا أَخْرَجَتْ هَذِهِ، وَلَمْ تُخْرِجْ هَذِهِ، فَنَهَانَا عَنْ ذَلِكَ. وَأَمَّا الْوَرِقُ فَلَمْ يَنْهَنَا.

Abu al-Rabīʿ narrated: Ḥammād narrated [H]. Also, Ibn al-Muthannā narrated; Yazīd ibn Ḥārūn narrated; both from Yaḥyā ibn Saʿīd; with the same chain of transmission: **a similar text.**

حَدَّثَنَا أَبُو الرَّبِيعِ، حَدَّثَنَا حَمَّادٌ، ح. وَحَدَّثَنَا ابْنُ الْـمُثَنَّى، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، جَمِيعًا عَنْ يَحْيَى بْنِ سَعِيدٍ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

CHAPTER 20

ON RENTING FARMLAND

[3468–118]. (Dar al-Salam 3751) Yaḥyā ibn Yaḥyā narrated: ʿAbd al-Wāḥid ibn Ziyād reported [H]. Abu Bakr ibn Abi Shaybah narrated; ʿAlī ibn Mushir narrated; both from al-Shaybānī; from ʿAbdullāh ibn al-Sā'ib. He said: **'I asked ʿAbdullāh ibn Maʿqil about *muzāraʿah*. He said: "Thābit ibn al-Ḍaḥḥāk told me that 'God's Messenger (peace be upon him) prohibited *muzāraʿah*'."'**

In Ibn Abi Shaybah's version: **'He prohibited it'**. He also said: **'I asked Ibn Maʿqil', without naming him ʿAbdullāh'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، كِلاَهُمَا عَنِ الشَّيْبَانِيِّ، عَنْ عَبْدِ اللهِ بْنِ السَّائِبِ، قَالَ: سَأَلْتُ عَبْدَ اللهِ بْنَ مَعْقِلٍ عَنِ الْمُزَارَعَةِ فَقَالَ: أَخْبَرَنِي ثَابِتُ بْنُ الضَّحَّاكِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُزَارَعَةِ. وَفِي رِوَايَةِ ابْنِ أَبِي شَيْبَةَ نَهَى عَنْهَا. وَقَالَ سَأَلْتُ ابْنَ مَعْقِلٍ. وَلَمْ يُسَمِّ عَبْدَ اللهِ.

[3469–119]. (Dar al-Salam 3752) Isḥāq ibn Manṣūr narrated: Yaḥyā ibn Ḥammād reported; Abu ʿAwānah reported; from Sulaymān al-Shaybānī; from ʿAbdullāh ibn al-Sā'ib. He said: **'We visited ʿAbdullāh ibn Maʿqil and asked him about *muzāraʿah*. He said: "Thābit claimed that God's Messenger (peace be upon him)**

prohibited *muzāraʿah* and permitted fixed rent. He said: it is acceptable”.’

حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا يَحْيَى بْنُ حَمَّادٍ، أَخْبَرَنَا أَبُو عَوَانَةَ، عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ، عَنْ عَبْدِ اللهِ بْنِ السَّائِبِ، قَالَ: دَخَلْنَا عَلَى عَبْدِ اللهِ بْنِ مَعْقِلٍ فَسَأَلْنَاهُ عَنِ الْـمُزَارَعَةِ، فَقَالَ زَعَمَ ثَابِتٌ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْـمُزَارَعَةِ، وَأَمَرَ بِالْـمُؤَاجَرَةِ وَقَالَ: «لا بَأْسَ بِهَا».

CHAPTER 21

LAND FREELY GIVEN

[3470–120]. (Dar al-Salam 3753) Yaḥyā ibn Yaḥyā narrated: Ḥammād ibn Zayd reported; from ʿAmr; that **‘Mujāhid said to Ṭāwūs: “Let us go to Rāfiʿ ibn Khadīj and hear from him the hadith he narrates from his father from the Prophet”. Ṭāwūs rebuked him and said: “By God, had I known that God’s Messenger (peace be upon him) prohibited it, I would not do it.” But it was narrated to me by someone who knows it better than they (meaning Ibn ʿAbbās) that God’s Messenger (peace be upon him) said: “For a person to give his land to his brother freely is better than to take a fixed rent for it”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ عَمْرٍو، أَنَّ مُجَاهِدًا قَالَ لِطَاوُسٍ: انْطَلِقْ بِنَا إِلَى ابْنِ رَافِعِ بْنِ خَدِيجٍ فَاسْمَعْ مِنْهُ الْحَدِيثَ عَنْ أَبِيهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. قَالَ: فَانْتَهَرَهُ. قَالَ: إِنِّي وَاللهِ لَوْ أَعْلَمُ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْهُ مَا فَعَلْتُهُ. وَلَكِنْ حَدَّثَنِي مَنْ هُوَ أَعْلَمُ بِهِ مِنْهُمْ، (يَعْنِي ابْنَ عَبَّاسٍ) أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لأَنْ يَمْنَحَ الرَّجُلُ أَخَاهُ أَرْضَهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا خَرْجًا مَعْلُومًا».

[3471–121]. (Dar al-Salam 3754–3755) Ibn Abi ʿUmar narrated: Sufyān narrated; from ʿAmr; and Ṭāwūs’s son; from Ṭāwūs, that he used to let land for a portion of its produce. ʿAmr said that he said to him: **‘Abu ʿAbd al-Raḥmān, you may wish not to make such**

mukhābarah **arrangements. People claim that the Prophet (peace be upon him) prohibited *mukhābarah*'. He said: 'ʿAmr! The most knowledgeable of them (meaning Ibn ʿAbbās) told me that the Prophet did not prohibit it, but said: "For any of you to give it [i.e., farmland] to his brother free of charge is better than to take fixed rent for it".'**

وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، عَنْ عَمْرٍو، وَابْنُ طَاوُسٍ عَنْ طَاوُسٍ، أَنَّهُ كَانَ يُخَابِرُ. قَالَ عَمْرٌو: فَقُلْتُ لَهُ يَا أَبَا عَبْدِ الرَّحْمَنِ، لَوْ تَرَكْتَ هَذِهِ الْمُخَابَرَةَ فَإِنَّهُمْ يَزْعُمُونَ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُخَابَرَةِ. فَقَالَ: أَيْ عَمْرُو، أَخْبَرَنِي أَعْلَمُهُمْ بِذَلِكَ (يَعْنِي ابْنَ عَبَّاسٍ) أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لَمْ يَنْهَ عَنْهَا، إِنَّمَا قَالَ: «يَمْنَحُ أَحَدُكُمْ أَخَاهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا خَرْجًا مَعْلُومًا».

Ibn Abi ʿUmar narrated: al-Thaqafī narrated; from Ayyūb [H]. Also, Abu Bakr ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated: all from Wakīʿ; from Sufyān [H]. And, Muhammad ibn Rumḥ narrated; al-Layth reported; from Ibn Jurayj [H]. Further, ʿAlī ibn Ḥujr narrated to me; al-Faḍl ibn Mūsā narrated; from Sharīk; from Shuʿbah; all of them from ʿAmr ibn Dīnār; from Ṭāwūs; from Ibn ʿAbbās; from the Prophet (peace be upon him): **a similar text**.

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا الثَّقَفِيُّ، عَنْ أَيُّوبَ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، جَمِيعًا عَنْ وَكِيعٍ، عَنْ سُفْيَانَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنِ ابْنِ جُرَيْجٍ، ح. وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ، حَدَّثَنَا الْفَضْلُ بْنُ مُوسَى، عَنْ شَرِيكٍ، عَنْ شُعْبَةَ، كُلُّهُمْ عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: نَحْوَ حَدِيثِهِمْ.

[3472–122]. (Dar al-Salam 3756) ʿAbd ibn Ḥumayd and Muhammad ibn Rāfiʿ narrated to me: ʿAbd al-Razzāq (ʿAbd said: ‘reported’ and Ibn Rāfiʿ said: ‘narrated’); Maʿmar reported; from Ibn Ṭāwūs; from his father; from Ibn ʿAbbās; that the Prophet (peace be upon him) said: **‘For any of you to give his land to his brother is better than to take such-and-such (meaning a fixed rent) for it’.**

Ibn ʿAbbās said: **‘This means the *ḥaql*, which in the Anṣār’s parlance means *muḥāqalah*’.**

وَحَدَّثَنِي عَبْدُ بْنُ حُمَيْدٍ، وَمُحَمَّدُ بْنُ رَافِعٍ، (قَالَ عَبْدٌ أَخْبَرَنَا وَقَالَ ابْنُ رَافِعٍ حَدَّثَنَا) عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لأَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ أَرْضَهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهَا كَذَا وَكَذَا»، لِشَيْءٍ مَعْلُومٍ.

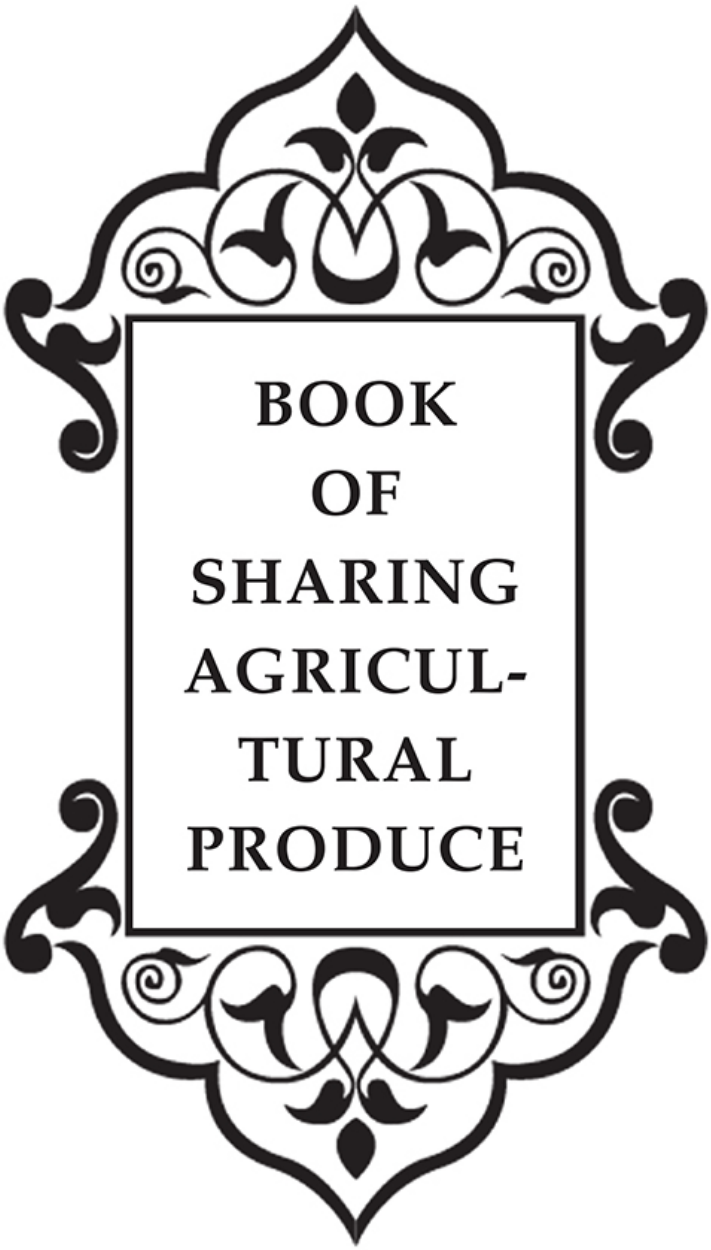
قَالَ: وَقَالَ ابْنُ عَبَّاسٍ: هُوَ الْحَقْلُ. وَهُوَ بِلِسَانِ الأَنْصَارِ الْمُحَاقَلَةُ.

[3473–123]. (Dar al-Salam 3757) ʿAbdullāh ibn ʿAbd al-Raḥmān al-Dārimī narrated: ʿAbdullāh ibn Jaʿfar al-Raqqī reported; ʿUbaydullāh ibn ʿAmr narrated; from Zayd ibn Abi Unaysah; from ʿAbd al-Malik ibn Zayd; from Ṭāwūs; from Ibn ʿAbbās; from the Prophet (peace be upon him). He said: **‘Whoever has land, to give it freely to his brother is better for him’.**

وَحَدَّثَنَا عَبْدُ اللهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ، أَخْبَرَنَا عَبْدُ اللهِ بْنُ جَعْفَرٍ الرَّقِّيُّ، حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عَمْرٍو، عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ زَيْدٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ كَانَتْ لَهُ أَرْضٌ فَإِنَّهُ أَنْ يَمْنَحَهَا أَخَاهُ خَيْرٌ».

Text Explanation

Imam al-Nawawi does not include any commentary on the hadiths in these chapters as they have been covered in the explanation of the hadiths included in Chapter 17 concerning the renting of agricultural land.


BOOK
OF
SHARING
AGRICUL-
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PRODUCE

CHAPTER 1

CULTIVATING THE LAND FOR A SHARE OF THE PRODUCE

[3474–1]. (Dar al-Salam 3758) Ahmad ibn Ḥanbal and Zuhayr ibn Ḥarb narrated (Zuhayr's text):[i] both said: Yaḥyā (who is al-Qaṭṭān) narrated; from ʿUbaydullāh; Nāfiʿ reported to me; from Ibn ʿUmar; that **'God's Messenger made a deal with the people of Khaybar, giving them half its produce of fruits and grains'.**

حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ، وَزُهَيْرُ بْنُ حَرْبٍ (وَاللَّفْظُ لِزُهَيْرٍ) قَالا: حَدَّثَنَا يَحْيَى (وَهُوَ الْقَطَّانُ)، عَنْ عُبَيْدِ اللهِ، أَخْبَرَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَامَلَ أَهْلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ ثَمَرٍ أَوْ زَرْعٍ.

[3475–2]. (Dar al-Salam 3759) ʿAlī ibn Ḥujr al-Saʿdī narrated to me: ʿAlī (who is Ibn Mushir) narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar. He said: **'God's Messenger (peace be upon him) gave [the people of] Khaybar half of what it produces of fruits and crops. He used to give his wives one hundred *wusqs* every year: eighty *wusqs* of dates and twenty *wusqs* of barley. When ʿUmar was ruling, he divided [the land of] Khaybar and offered the Prophet's wives a choice: either to give them the land and water, or to guarantee the *wusqs* every year. They chose differently: some of them chose the land and**

water while others chose the *wusqs* every year. ʿĀ'ishah and Ḥafṣah were among the ones choosing the land and water'.

وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، حَدَّثَنَا عَلِيٌّ (وَهُوَ ابْنُ مُسْهِرٍ)، أَخْبَرَنَا عُبَيْدُ اللهِ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، قَالَ: أَعْطَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْ ثَمَرٍ أَوْ زَرْعٍ. فَكَانَ يُعْطِي أَزْوَاجَهُ كَلَّ سَنَةٍ مِائَةَ وَسْقٍ: ثَمَانِينَ وَسْقًا مِنْ تَمْرٍ وَعِشْرِينَ وَسْقًا مِنْ شَعِيرٍ. فَلَمَّا وَلِيَ عُمَرُ قَسَمَ خَيْبَرَ، خَيَّرَ أَزْوَاجَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، أَنْ يُقْطِعَ لَهُنَّ الأَرْضَ وَالْمَاءَ، أَوْ يَضْمَنَ لَهُنَّ الأَوْسَاقَ كُلَّ عَامٍ. فَاخْتَلَفْنَ، فَمِنْهُنَّ مَنِ اخْتَارَ الأَرْضَ وَالْمَاءَ، وَمِنْهُنَّ مَنِ اخْتَارَ الأَوْسَاقَ كُلَّ عَامٍ. فَكَانَتْ عَائِشَةُ وَحَفْصَةُ مِمَّنِ اخْتَارَتَا الأَرْضَ وَالْمَاءَ.

[3476–3]. (Dar al-Salam 3760) Ibn Numayr narrated: my father narrated; ʿUbaydullāh narrated; Nāfiʿ narrated to me; from ʿAbdullāh ibn ʿUmar; that **'God's Messenger (peace be upon him) made a deal with the people of Khaybar giving them half its produce of crops and fruits'. He narrated the hadith in a similar text to ʿAlī ibn Mushir's narration, but did not mention that ʿĀ'ishah and Ḥafṣah were among the ones choosing the land and water. He said: "He gave the Prophet's wives the choice to give them the land", but did not mention the water.'**

وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللهِ، حَدَّثَنِي نَافِعٌ، عَنِ عَبْدِ اللهِ بْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَامَلَ أَهْلَ خَيْبَرَ بِشَطْرِ مَا خَرَجَ مِنْهَا مِنْ زَرْعٍ أَوْ ثَمَرٍ. وَاقْتَصَّ الْحَدِيثَ بِنَحْوِ حَدِيثِ عَلِيِّ بْنِ مُسْهِرٍ، وَلَمْ يَذْكُرْ فَكَانَتْ عَائِشَةُ وَحَفْصَةُ مِمَّنِ اخْتَارَتَا الأَرْضَ وَالْمَاءَ. وَقَالَ خَيَّرَ أَزْوَاجَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُقْطِعَ لَهُنَّ الأَرْضَ، وَلَمْ يَذْكُرِ الْمَاءَ.

[3477–4]. (Dar al-Salam 3761) Abu al-Ṭāhir narrated to me:[ii] ʿAbdullāh ibn Wahb narrated; Usāmah ibn Zayd al-Laythī reported to me; from Nāfiʿ; from ʿAbdullāh ibn ʿUmar. He said: **'When Khaybar was taken over, the Jews requested God's Messenger to allow them to stay, and they would work the land for half its produce of fruits and crops. God's Messenger said: "I will let you stay on these terms for as long as we decide".' He added the hadith in similar terms to the hadith narrated by Ibn Numayr and Ibn Mushir from ʿUbaydullāh. He added to it: 'The one-half of the Khaybar produce was distributed to those who were entitled to shares of it, and God's Messenger (peace be upon him) took one-fifth of it.'**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، حَدَّثَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي أُسَامَةُ بْنُ زَيْدٍ اللَّيْثِيُّ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ قَالَ: لَمَّا افْتُتِحَتْ خَيْبَرُ سَأَلَتْ يَهُودُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُقِرَّهُمْ فِيهَا، عَلَى أَنْ يَعْمَلُوا عَلَى نِصْفِ مَا خَرَجَ مِنْهَا مِنَ الثَّمَرِ وَالزَّرْعِ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أُقِرُّكُمْ فِيهَا عَلَى ذَلِكَ مَا شِئْنَا». ثُمَّ سَاقَ الْحَدِيثَ بِنَحْوِ حَدِيثِ ابْنِ نُمَيْرٍ وَابْنِ مُسْهِرٍ، عَنْ عُبَيْدِ اللهِ. وَزَادَ فِيهِ وَكَانَ الثَّمَرُ يُقْسَمُ عَلَى السُّهْمَانِ مِنْ نِصْفِ خَيْبَرَ، فَيَأْخُذُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الْخُمُسَ.

[3478–5]. (Dar al-Salam 3762) Ibn Rumḥ narrated:[iii] al-Layth reported; from Muhammad ibn ʿAbd al-Raḥmān; from Nāfiʿ; from ʿAbdullāh ibn ʿUmar; from God's Messenger (peace be upon him); that **'He gave the date farms and land of Khaybar to the Jews of Khaybar on conditions that they would cultivate it at their expense, and God's Messenger would take half its produce'.**

وَحَدَّثَنَا ابْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، أَنَّهُ دَفَعَ إِلَى يَهُودِ خَيْبَرَ نَخْلَ خَيْبَرَ وَأَرْضَهَا، عَلَى أَنْ يَعْتَمِلُوهَا مِنْ أَمْوَالِهِمْ، وَلِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ شَطْرُ ثَمَرِهَا.

[3479–6]. (Dar al-Salam 3763) Muhammad ibn Rāfiʿ and Isḥāq ibn Manṣūr narrated to me (Ibn Rāfiʿ's text):[iv] both said: ʿAbd al-Razzāq narrated: Ibn Jurayj reported; Mūsā ibn ʿUqbah narrated to me; from Nāfiʿ; from Ibn ʿUmar; that **''Umar ibn al-Khaṭṭāb removed the Jews and Christians from the Hijaz. When God's Messenger (peace be upon him) took over Khaybar, he wanted the Jews to depart then. As God's Messenger won the Battle of Khaybar, its land fell to God, His Messenger and the Muslims. Therefore, he wanted the Jews to leave it. The Jews appealed to him to let them stay in return for their cultivating the land and taking half its produce. God's Messenger said to them: "We let you stay on these conditions for as long as we wish". They stayed until ʿUmar ordered them to leave and go to Taymā' and Arīḥā'.'**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، وَإِسْحَاقُ بْنُ مَنْصُورٍ (وَاللَّفْظُ لِابْنِ رَافِعٍ) قَالا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، حَدَّثَنِي مُوسَى بْنُ عُقْبَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَجْلَى الْيَهُودَ وَالنَّصَارَى مِنْ أَرْضِ الْحِجَازِ وَأَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لَمَّا ظَهَرَ عَلَى خَيْبَرَ أَرَادَ إِخْرَاجَ الْيَهُودِ مِنْهَا. وَكَانَتِ الأَرْضُ حِينَ ظُهِرَ عَلَيْهَا لِلهِ وَلِرَسُولِهِ وَلِلْمُسْلِمِينَ. فَأَرَادَ إِخْرَاجَ الْيَهُودِ مِنْهَا، فَسَأَلَتِ الْيَهُودُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُقِرَّهُمْ بِهَا، عَلَى أَنْ يَكْفُوا عَمَلَهَا، وَلَهُمْ نِصْفُ الثَّمَرِ. فَقَالَ لَهُمْ رَسُولُ اللهِ صَلَّى

اللهُ عَلَيْهِ وَسَلَّمَ: «نُقِرُّكُمْ بِهَا عَلَى ذَلِكَ مَا شِئْنَا». فَقَرُّوا بِهَا حَتَّى أَجْلاَهُمْ عُمَرُ إِلَى تَيْمَاءَ وَأَرِيحَاءَ.

Text Explanation

These hadiths make clear that *musāqāh*, which engages people to cultivate farm land for a share of its produce is permissible. This is the view of Mālik, al-Thawrī, al-Layth, al-Shāfiʿī, Ahmad, all scholars of Hadith and Fiqh, the Ẓāhirī scholars and the great majority of other scholars. Abu Ḥanīfah said that it is not permissible. He explains these hadiths on the basis that Khaybar was taken over by force of arms and that its population became God's Messenger's slaves. Therefore, what he took was his and what he left them also belonged to him. The majority of scholars base their view on the apparent meaning of the hadiths in this chapter and that the Prophet said to the people of Khaybar: 'I let you stay for as long as God will let you'. This is clear that they were not slaves. *Qadi* ʿIyāḍ said:

> Scholars differ concerning Khaybar: Was it taken over by force of arms, peaceful arrangements, or by the desertion of its people without combat? Or was some of it taken by force and some peacefully, and a portion of it was deserted? Or was it only partly peaceful and partly by force? This is the most accurate view. It is the view of Mālik and those who concur with him, and it is stated by Ibn ʿUyaynah. Each of these views is based on a narrated text. According to a hadith narrated by Muslim [No. 3479] 'When God's Messenger (peace be upon him) took over Khaybar, he wanted the Jews to leave the city. As God's Messenger won the Battle of Khaybar, its land fell to God, His Messenger and the Muslims'. This is evidence in support of the view that Khaybar was taken by force, because Muslims have a right to what is taken by force. Scholars who say that it was taken peacefully

maintain that the peaceful arrangements stipulated that the land would belong to the Muslims, but God knows best.

Scholars differ concerning which trees can be subject to *musāqāh* arrangements. Dāwūd said that it applies only to date trees. Al-Shāfiʿī said that it applies only to date and grape trees. Mālik said it is applicable to all trees. This is another view of al-Shāfiʿī. Dāwūd considered it as a concession, and therefore he limited it to what is stated in the text. Al-Shāfiʿī has the same view as Dāwūd that it is a concession, but he says that grapes are treated in the same way as dates in most aspects. Mālik, on the other hand, considers the reason for the permissibility is such that it is needed and serves people's interests. This is true of all trees; therefore, the ruling applies to them by analogy. But God knows best.

The hadiths mention that the arrangements with the people of Khaybar gave them 'half of its produce'. This shows that the arrangement should specify the share due to the party cultivating the land. It cannot be left unspecified, as in saying: 'You shall have some of the produce'. Scholars who say that *musāqāh* is permissible agree that it is acceptable on whatever the two parties agree, whether it is much or little.

The hadiths also mention that the arrangement included whatever the land produced of 'fruits and crops'. Al-Shāfiʿī and those who agree with him, who are in fact the majority of scholars, consider this as evidence in support of the permissibility of *muzāraʿah* as an addition to *musāqāh*, but they do not consider *muzāraʿah* permissible on its own. Thus the owner makes a deal with the worker: the deal is one of *musāqāh* for dates and *muzāraʿah* for the land produce, as took place in Khaybar. Mālik said that *muzāraʿah* is not permissible in any case, except for what is on the land in between the trees. Abu Ḥanīfah and Zufar said that both *muzāraʿah* and *musāqāh* are invalid, whether together or separate, and if a deal is made for either, it is invalidated. By contrast Ibn Abi Laylā, Abu Yūsuf, Muhammad and all Kufi scholars, as well as scholars combining Fiqh and Hadith, Ahmad, Ibn Khuzaymah, Ibn Shurayḥ and others said that *muzāraʿah* and

musāqāh are permissible together, and each is permissible on its own. This is the view of choice, clearly apparent on the basis of the hadiths concerning Khaybar. The claim that *muzāraʿah* was a follow up to *musāqāh* at Khaybar is incorrect. In fact, it was made independently. Moreover, the essence of *musāqāh* which makes it permissible is also present in *muzāraʿah*, and it is analogous with *qirāḍ* which is partnership where one partner provides capital and the other uses it in trade, which is unanimously agreed to be permissible. *Qirāḍ* is similar to *muzāraʿah* in every respect. Moreover, Muslims in all provinces and generations continue to use *muzāraʿah*. The hadiths that mentioned earlier prohibiting *mukhābarah* have already been explained. They are taken to refer to an agreement stipulating that each partner has a particular area of the land. Ibn Khuzaymah wrote a book explaining the permissibility of *muzāraʿah* and provided extensive details. He also discusses the hadiths mentioning its prohibition, and God knows best.

The Prophet (peace be upon him) said to the Jews of Khaybar: 'We let you stay on these conditions for as long as we wish'. In the version in *al-Muwaṭṭa'*: 'I let you stay on for as long as God lets you stay'. Scholars said that this refers to the duration of the agreement. It means that we let you stay in Khaybar for as long as we wish then we may require you to leave. The Prophet (peace be upon him) intended to remove the unbelievers from Arabia, as he ordered towards the end of his life, and as indicated in this and other hadiths.

Scholars of the Ẓāhirī School take this as evidence permitting making a *musāqāh* agreement for an undefined period, but the majority of scholars say that it is only permissible for a specified period in the same way as a rent agreement, understanding the hadith as we have already explained. Another suggestion is that this was permitted in the early years of Islam and to the Prophet in particular. Another suggestion says that the condition means that the Muslims had the right to remove the Jews when the agreed period had lapsed, and that a period was actually stated. Thus, the purpose

is to make clear that *musāqāh* is not a permanent contract such as a sale or marriage; it is time related and it ends when the time specified is over. In the case of Khaybar, the Muslims had the right to choose either to make another agreement or to order the Jews to leave. Abu Thawr said that if the two parties left the duration of the *musāqāh* agreement unspecified, it means that it is made for one year, but God knows best.

Hadith No. 3478 states that the *musāqāh* arrangement with the Jews of Khaybar stated that the Jews 'would cultivate it at their expense'. This condition explains the duties of the worker cultivating the land. He should provide whatever is needed to maintain and improve the fruits that give an annual yield, such as irrigation, keeping water sources clean, taking care of an area around trees, tree treatment, removal of weeds and dead branches, picking up and looking after the fruits and whatever else is needed. On the other hand, what is required for maintaining the land itself, such as building walls or fences and digging water courses, etc. is the responsibility of the owner, but God knows best.

Hadith No. 3475 mentions that the Prophet 'used to give his wives one hundred *wusqs* every year: eighty *wusqs* of dates and twenty *wusqs* of barley'. Scholars say this shows that the land used for ordinary crops in Khaybar was smaller than what was kept for trees.

These hadiths provide evidence in support of the view of al-Shāfiʿī and other scholars that land that is taken over by force is divided among the soldiers of the army that fights its battle, in the same way as movable war gains are distributed. Essentially, there is no disagreement about the division of movable war gains. Al-Shāfiʿī's view is based on the fact that the Prophet divided the land of Khaybar among the army. Mālik and his followers said that the Muslim ruler makes it the property of the Muslim community, as ʿUmar did with the land of Iraq. Abu Ḥanīfah and Kufi scholars said that the Muslim ruler decides whether to divide it or to let its original owners continue to hold it against a tax he imposes on it, and it becomes their property like the land taken over peacefully.

Hadith No. 3477 says: ‘The one-half of the Khaybar produce was distributed to those who were entitled to shares of it, and God’s Messenger (peace be upon him) took one-fifth of it’. This is clear evidence that Khaybar was taken by force, because the shares were due to the victorious soldiers.

‘The Prophet took one-fifth’ means that he divided it among those entitled to it. These are five categories mentioned in the verse that says: ‘Know that one-fifth of whatever booty you may acquire in war is for God and the Messenger, and for the near of kin, the orphans, the needy and the traveller in need’. (8: 41) The Prophet’s own share is one-fifth of this one-fifth,[v] and he gave the rest to those four categories mentioned in the verse.

It should be clear that this agreement with the people of Khaybar was made with full agreement from the fighters and those who were entitled to shares of the war gains. They divided the war gains among them and each one became entitled to a specified share.

Hadith No. 3475 mentions: ‘When ʿUmar was ruling, he divided [the land of] Khaybar’. This refers to what ʿUmar did when he turned the Jews away from Khaybar. He divided the same land and gave it to the ones entitled to shares of it. ʿUmar removed the Jews to Taymā’ and Arīḥā’. These are two towns in the north of the Arabian Peninsula. This is evidence that when the Prophet mentioned the need to remove the Jews and Christians from Arabia, he meant that they should not stay in certain parts of the Arabian Peninsula, particularly Hijaz. These two towns are in Arabia but not in Hijaz, but God knows best.

i. Related by al-Bukhari, 2329; Abu Dāwūd, 3408; al-Tirmidhī, 1383; Ibn Mājah, 2467.

ii. Related by Abu Dāwūd, 3008.

iii. Related by Abu Dāwūd, 3409; al-Nasā’ī, 3939 and 3940.

iv. Related by al-Bukhari, 2338 and 3152.

v. This makes the Prophet's share of war gains 4% of the total, because four-fifths, i.e., 80%, are divided among the army, while one-fifth or 20% is given to the five categories mentioned in the verse. The Prophet was one of these five categories making him entitled to 4%.

CHAPTER 2

PLANTING TREES AND CROPS

[3480–7]. (Dar al-Salam 3764) Ibn Numayr narrated: my father narrated; ʿAbd al-Malik narrated; from ʿAṭā’; from Jābir. He said that **‘God’s Messenger (peace be upon him) said: “When a Muslim plants something, then whatever is eaten of it is credited to him as charity [i.e., *ṣadaqah*]; whatever is stolen from it is credited to him as charity; whatever wild animals eat of it is credited to him as charity; whatever birds eat of it is credited to him as charity; and whatever is taken by anyone is credited to him as charity”.’**

حَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عَبْدُ الْـمَلِكِ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَا مِنْ مُسْلِمٍ يَغْرِسُ غَرْسًا، إِلاَّ كَانَ مَا أُكِلَ مِنْهُ لَهُ صَدَقَةٌ، وَمَا سُرِقَ مِنْهُ لَهُ صَدَقَةٌ، وَمَا أَكَلَ السَّبُعُ مِنْهُ فَهُوَ لَهُ صَدَقَةٌ، وَمَا أَكَلَتِ الطَّيْرُ فَهُوَ لَهُ صَدَقَةً، وَلاَ يَرْزَؤُهُ أَحَدٌ إِلاَّ كَانَ لَهُ صَدَقَةٌ.

[3481–8]. (Dar al-Salam 3765) Qutaybah ibn Saʿīd narrated: Layth narrated [H]. Muhammad ibn Rumḥ narrated; al-Layth reported; from Abu al-Zubayr; from Jābir; that the Prophet (peace be upon him) visited Umm Mubashshir of the Anṣār on her date farm. **‘He asked her: “Who planted these date trees: a Muslim or an unbeliever?” She said: “it is a Muslim”. He said: “Whatever**

tree or plant a Muslim plants and then a human being, an animal or whatever eats of it, it will be credited to him as charity [i.e., *ṣadaqah*]”.’

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ دَخَلَ عَلَى أُمِّ مُبَشِّرٍ الأَنْصَارِيَّةِ فِي نَخْلٍ لَهَا، فَقَالَ لَهَا النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ غَرَسَ هَذَا النَّخْلَ، أَمُسْلِمٌ أَمْ كَافِرٌ»؟ فَقَالَتْ: بَلْ مُسْلِمٌ. فَقَالَ: «لا يَغْرِسُ مُسْلِمٌ غَرْسًا، وَلا يَزْرَعُ زَرْعًا، فَيَأْكُلَ مِنْهُ إِنْسَانٌ وَلاَ دَابَّةٌ وَلاَ شَيْءٌ إِلاَّ كَانَتْ لَهُ صَدَقَةٌ.

[3482–9]. (Dar al-Salam 3766) Muhammad ibn Ḥātim and Ibn Abi Khalaf narrated to me: both said: Rawḥ narrated; Ibn Jurayj narrated; Abu al-Zubayr reported to me; that he heard Jābir ibn ʿAbdullāh say**: ‘I heard God’s Messenger (peace be upon him) say: “Whatever a Muslim plants of trees or other plants and then an animal or a bird or some other eats of it, he will earn reward for it”.’**

Ibn Abi Khalaf said: **‘some other bird’.**

وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، وَابْنُ أَبِي خَلَفٍ، قَالا: حَدَّثَنَا رَوْحٌ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «لا يَغْرِسُ رَجُلٌ مُسْلِمٌ غَرْسًا وَلا زَرْعًا، فَيَأْكُلَ مِنْهُ سَبُعٌ أَوْ طَائِرٌ أَوْ شَيْءٌ، إِلاَّ كَانَ لَهُ فِيهِ أَجْرٌ».

وَقَالَ ابْنُ أَبِي خَلَفٍ: طَائِرٌ شَيْءٌ.

[3483–10]. (Dar al-Salam 3767) Ahmad ibn Saʿīd ibn Ibrāhīm narrated: Rawḥ ibn ʿUbādah narrated; Zakariyyā' ibn Isḥāq narrated; ʿAmr ibn Dīnār reported to me; that he heard Jābir ibn ʿAbdullāh say: '**The Prophet (peace be upon him) visited Umm Maʿbad on her orchard. He said: "Umm Maʿbad, who planted these date trees: a Muslim or an unbeliever?" She said: "A Muslim". He said: "When a Muslim plants something and a person, an animal or a bird eats of it, it counts as charity until the Day of Judgement".'**

حَدَّثَنَا أَحْمَدُ بْنُ سَعِيدِ بْنِ إِبْرَاهِيمَ، حَدَّثَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا زَكَرِيَّاءُ بْنُ إِسْحَاقَ، أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: دَخَلَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى أُمِّ مَعْبَدٍ حَائِطًا، فَقَالَ: «يَا أُمَّ مَعْبَدٍ، مَنْ غَرَسَ هَذَا النَّخْلَ أَمُسْلِمٌ أَمْ كَافِرٌ»؟ فَقَالَتْ: بَلْ مُسْلِمٌ. قَالَ: «فَلا يَغْرِسُ الْـمُسْلِمُ غَرْسًا فَيَأْكُلَ مِنْهُ إِنْسَانٌ، وَلا دَابَّةٌ وَلا طَيْرٌ إِلاَّ كَانَ لَهُ صَدَقَةً إِلَى يَوْمِ الْقِيَامَةِ».

[000–11]. (Dar al-Salam 3768) Abu Bakr ibn Abi Shaybah narrated: Ḥafṣ ibn Ghiyāth narrated [H]. Also, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated; both from Abu Muʿāwiyah [H]. And, ʿAmr al-Nāqid narrated; ʿAmmār ibn Muhammad narrated [H]. Further, Abu Bakr ibn Abi Shaybah narrated; Ibn Fuḍayl narrated; all these from al-Aʿmash; from Jābir. In ʿAmr's narration from ʿAmmār and in Abu Kurayb's narration from Abu Muʿāwiyah; both add: 'from Umm Mubashshir'. In Ibn Fuḍayl's narration: 'from Zayd ibn Ḥārithah's wife'. In Isḥāq's narration from Abu Muʿāwiyah, he said: 'He might have said: from Umm Mubashshir, from the Prophet (peace be upon him), and he might not have said

it’. All of them said: from the Prophet (peace be upon him): **a similar text to the narration of ʿAṭā’, Abu al-Zubayr and ʿAmr ibn Dīnār.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، ح. وَحَدَّثَنَا أَبُو كُرَيْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، جَمِيعًا عَنْ أَبِي مُعَاوِيَةَ، ح. وَحَدَّثَنَا عَمْرٌو النَّاقِدُ، حَدَّثَنَا عَمَّارُ بْنُ مُحَمَّدٍ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا ابْنُ فُضَيْلٍ، كُلُّ هَؤُلاَءِ عَنِ الأَعْمَشِ، عَنْ أَبِي سُفْيَانَ، عَنْ جَابِرٍ. زَادَ عَمْرٌو فِي رِوَايَتِهِ عَنْ عَمَّارٍ، وَأَبُو كُرَيْبٍ فِي رِوَايَتِهِ عَنْ أَبِي مُعَاوِيَةَ، فَقَالا: عَنْ أُمِّ مُبَشِّرٍ، وَفِى رِوَايَةِ ابْنِ فُضَيْلٍ عَنِ امْرَأَةِ زَيْدِ بْنِ حَارِثَةَ. وَفِي رِوَايَةِ إِسْحَاقَ عَنْ أَبِي مُعَاوِيَةَ، قَالَ: رُبَّمَا قَالَ: عَنْ أُمِّ مُبَشِّرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَرُبَّمَا لَمْ يَقُلْ. وَكُلُّهُمْ قَالُوا عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، بِنَحْوِ حَدِيثِ عَطَاءٍ وَأَبِي الزُّبَيْرِ وَعَمْرِو بْنِ دِينَارٍ.

[3484–12]. (Dar al-Salam 3769) Yaḥyā ibn Yaḥyā, Qutaybah ibn Saʿīd and Muhammad ibn ʿUbayd al-Ghubari narrated (Yaḥyā’s text):[i] Abu ʿAwānah (Yaḥyā said: ‘reported’ and the other two said: ‘narrated’); from Qatādah; from Anas. He said that God’s Messenger (peace be upon him) said: **‘If any Muslim plants a tree or some other plant and any bird, human or animal eats of it, it will be credited to him as charity.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَمُحَمَّدُ بْنُ عُبَيْدٍ الْغُبَرِيُّ (وَاللَّفْظُ لِيَحْيَى). (قَالَ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) أَبُو عَوَانَةَ، عَنْ قَتَادَةَ، عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَا مِنْ مُسْلِمٍ يَغْرِسُ غَرْسًا، أَوْ يَزْرَعُ زَرْعًا، فَيَأْكُلُ مِنْهُ طَيْرٌ أَوْ إِنْسَانٌ أَوْ بَهِيمَةٌ، إِلاَّ كَانَ لَهُ بِهِ صَدَقَةٌ».

[3485–13]. (Dar al-Salam 3770) ʿAbd ibn Ḥumayd narrated: Muslim ibn Ibrāhīm narrated; Abān ibn Yazīd narrated; Qatādah narrated; Anas ibn Mālik narrated; that **‘The Prophet entered a date farm belonging to Umm Mubashshir, an Anṣārī woman. God’s Messenger asked: “Who planted these date trees: a Muslim or an unbeliever?” They said: “a Muslim…”’ adding a similar text**.

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا أَبَانُ بْنُ يَزِيدَ، حَدَّثَنَا قَتَادَةُ، حَدَّثَنَا أَنَسُ بْنُ مَالِكٍ، أَنَّ نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ دَخَلَ نَخْلاً لأُمِّ مُبَشِّرٍ - امْرَأَةٍ مِنَ الأَنْصَارِ - فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ غَرَسَ هَذَا النَّخْلَ، أَمُسْلِمٌ أَمْ كَافِرٌ»؟ قَالُوا مُسْلِمٌ. بِنَحْوِ حَدِيثِهِمْ.

Text Explanation

These hadiths speak of the importance and the benefit of planting, and that the reward earned by people who plant continues as long as the plants, crops and whatever they yield continue, until the Day of Judgement. Scholars differ as to which earnings are best. Some say: trade; others say: handicrafts; and others still say: farming, which is the correct view. I explain this in detail towards the end of the chapter on food in my book *Sharḥ al-Muhadhdhab*.

These hadiths also make clear that reward in the life to come is granted only to Muslims, and that a person is rewarded for what is stolen of his property and what is ruined by an animal or a bird or some other creature.

Hadith No. 3481, which is narrated by al-Layth, the narration says: ‘from Abu al-Zubayr; from Jābir; that the Prophet (peace be upon him) visited Umm Mubashshir of the Anṣār on her date farm’. This is how it is recorded in most manuscripts: ‘he visited Umm Mubashshir’. In some it

reads: ‘He visited Umm Maʿbad or Umm Mubashshir’. Scholars said: What is known concerning al-Layth’s narration is that she was Umm Mubashshir, without doubt. In other people’s narrations, the name is given as Umm Maʿbad, as it occurs in hadith No. 3483. She is also referred to as Umm Bashīr. This means that she was variably called Umm Mubashshir, Umm Maʿbad and Umm Bashīr. It is also said that she was called al-Khulaydah, but this is not confirmed. She was married to Zayd ibn Ḥārithah. She embraced Islam and pledged allegiance to the Prophet.

Transmission

The chain of transmission of hadith No. 3483 is as follows: ‘Ahmad ibn Saʿīd ibn Ibrāhīm narrated: Rawḥ ibn ʿUbādah narrated; Zakariyyā’ ibn Isḥāq narrated; ʿAmr ibn Dīnār reported to me’. Abu Masʿūd al-Dimashqī said: ‘This is how it occurs in the manuscripts of Muslim’s *Ṣaḥīḥ* in this hadith, mentioning ʿAmr ibn Dīnār, while the hadith is better known as ‘Abu al-Zubayr from Jābir’.

In the other narrations of the same hadith, the following occurs: ‘from al-Aʿmash; from Jābir. In ʿAmr’s narration from ʿAmmār and in Abu Kurayb’s narration from Abu Muʿāwiyah; both add: from Umm Mubashshir’. In some copies of Muslim’s *Ṣaḥīḥ*, it occurs as ‘in Abu Bakr’s narration’ and in some as ‘in Abu Kurayb’. *Qadi* ʿIyāḍ said that some scholars say that the correct name is Abu Kurayb because the chain of transmission begins with ‘Abu Bakr ibn Abi Shaybah from Ḥafṣ ibn Ghiyāth’, followed by Abu Kurayb and Isḥāq ibn Ibrāhīm, from Abu Muʿāwiyah’. This means that the one who narrates from Abu Muʿāwiyah is Abu Kurayb, not Abu Bakr. This is very clear, but God knows best.

i. Related by al-Bukhari, 2320 and 6012; al-Tirmidhī, 1382.

CHAPTER 3

FOREGOING WHAT IS STRICKEN BY CALAMITY

[3486–14]. (Dar al-Salam 3771–3772) Abu al-Ṭāhir narrated to me:[i] Ibn Wahb reported; from Ibn Jurayj; that Abu al-Zubayr reported to him; from Jābir ibn ʿAbdullāh; that God's Messenger (peace be upon him) said: **'If you sell your brother fruits'.** [H].

Also, Muhammad ibn ʿAbbād narrated; Abu Ḍamrah narrated; from Ibn Jurayj; from Abu al-Zubayr; that he heard Jābir ibn ʿAbdullāh say; that **'God's Messenger (peace be upon him) said: "If you sell some fruits to your brother and then it was struck by calamity, it is not lawful for you to take anything from him. How can you take your brother's money without any right?".'**

حَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، عَنِ ابْنِ جُرَيْجٍ، أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِنْ بِعْتَ مِنْ أَخِيكَ ثَمَرًا». ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبَّادٍ، حَدَّثَنَا أَبُو ضَمْرَةَ، عَنِ ابْنِ جُرَيْجٍ، عَنْ أَبِي الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَوْ بِعْتَ مِنْ أَخِيكَ ثَمَرًا، فَأَصَابَتْهُ جَائِحَةٌ، فَلاَ يَحِلُّ لَكَ أَنْ تَأْخُذَ مِنْهُ شَيْئًا. بِمَ تَأْخُذُ مَالَ أَخِيكَ بِغَيْرِ حَقٍّ»؟

Ḥasan al-Ḥulwānī narrated: Abu ʿĀṣim narrated; from Ibn Jurayj; with the same chain of transmission: **the same text.**

وَحَـدَّثَنَا حَسَـنٌ الْـحُلْـوَانِيُّ، حَـدَّثَنَا أَبُـو عَاصِـمٍ، عَنِ ابْنِ جُرَيْـجٍ، بِهَـذَا الإِسْـنَادِ: مِثْلَهُ.

[3487–15]. (Dar al-Salam 3773) Yaḥyā ibn Ayyūb, Qutaybah and ʿAlī ibn Ḥujr narrated:[ii] they said: Ismāʿīl ibn Jaʿfar narrated; from Ḥumayd; from Anas; that **‘The Prophet prohibited the sale of the fruits of date trees until they have brightened. We asked Anas: “What is brightening?” He said: “They become reddish or yellowish. Consider, if God prevents the growth of the fruit, what right do you have to take your brother’s money?”.’**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَعَلِيُّ بْنُ حُجْرٍ، قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ، عَنْ حُمَيْدٍ، عَنْ أَنَسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ ثَمَرِ النَّخْلِ حَتَّى تَزْهُوَ. فَقُلْنَا لأَنَسٍ: مَا زَهْوُهَا؟ قَالَ: تَحْمَرُّ وَتَصْفَرُّ. أَرَأَيْتَكَ إِنْ مَنَعَ اللهُ الثَّمَرَةَ، بِمَ تَسْتَحِلُّ مَالَ أَخِيكَ؟

[3488–000]. (Dar al-Salam 3774) Abu al-Ṭāhir narrated to me:[iii] Ibn Wahb reported; Mālik reported to me; from Ḥumayd al-Ṭawīl; from Anas ibn Mālik; that **‘God’s Messenger (peace be upon him) prohibited the sale of fruit until it brightens. They asked: “What does brightening mean?” He said: “It becomes reddish”. He said: “If God prevents the growth of the fruit, what right do you have to take your brother’s money?”.’**

حَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي مَالِكٌ، عَنْ حُمَيْدٍ الطَّوِيلِ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الثَّمَرَةِ حَتَّى تُزْهِيَ. قَالُوا وَمَا تُزْهِيَ؟ قَالَ: تَحْمَرُّ. فَقَالَ: إِذَا مَنَعَ اللهُ الثَّمَرَةَ فَبِمَ تَسْتَحِلُّ مَالَ أَخِيكَ؟

[3489–16]. (Dar al-Salam 3775) Muhammad ibn ʿAbbād narrated to me: ʿAbd al-ʿAzīz ibn Muhammad narrated; from Ḥumayd; from Anas; that the Prophet (peace be upon him) said: **‘If God does not let it grow, what right do any of you have to take his brother’s money?’**

حَدَّثَنِي مُحَمَّدُ بْنُ عَبَّادٍ، حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ حُمَيْدٍ، عَنْ أَنَسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِنْ لَمْ يُثْمِرْ هَا اللهُ، فَبِمَ يَسْتَحِلُّ أَحَدُكُمْ مَالَ أَخِيهِ»؟

[3490–17]. (Dar al-Salam 3776) Bishr ibn al-Ḥakam, Ibrāhīm ibn Dīnār and ʿAbd al-Jabbār ibn al-ʿAlā’ narrated (Bishr’s text):[iv] they said: Sufyān ibn ʿUyaynah narrated; from Ḥumayd al-Aʿraj; from Sulaymān ibn ʿAtīq; from Jābir; that **‘God’s Messenger (peace be upon him) ordered foregoing [what is ruined by] calamities’.**

Abu Isḥāq (who is Muslim’s disciple) said: ʿAbd al-Raḥmān ibn Bishr narrated to us from Sufyān: **the same**.

حَدَّثَنَا بِشْرُ بْنُ الْحَكَمِ، وَإِبْرَاهِيمُ بْنُ دِينَارٍ، وَعَبْدُ الْجَبَّارِ بْنُ الْعَلاَءِ (وَاللَّفْظُ لِبِشْرٍ)، قَالُوا حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ حُمَيْدٍ الأَعْرَجِ، عَنْ سُلَيْمَانَ بْنِ عَتِيقٍ، عَنْ جَابِرٍ، أَنَّ النّبيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَمَرَ بِوَضْعِ الْجَوَائِحِ.

قَالَ أَبُو إِسْحَاقَ (وَهْوَ صَاحِبُ مُسْلِمٍ): حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ بِشْرٍ عَنْ سُفْيَانَ بِهَذَا.

Text Explanation

These hadiths speak about a deal for fruits which are then ruined by some calamity. Another hadith, No. 3491, narrated by Abu Saʿīd al-Khudrī says: ‘During the Prophet’s lifetime, a man endured a loss affecting fruits which

he had bought, and his debts were heavy. God's Messenger said: "Give him of your charity". People gave him what they could, but this was not enough to settle all his debts. God's Messenger said to his creditors: "Take whatever you find [with him]. You have nothing to claim other than that".'

Scholars hold different views concerning fruits sold after their quality has been confirmed, and the seller hands them over to the buyer by giving him access to what he has bought. Then the fruits were ruined by some natural calamity, before it was time to pick them up. Who is the carer of the fruit: the seller or the buyer? Al-Shāfiʿī says in the more correct of his two views: the fruits are under the buyer's care, and it is not obligatory, but desirable, to forego what is ruined by the calamity. This is also the view of Abu Ḥanīfah, al-Layth ibn Saʿd and others. In his older view, al-Shāfiʿī and other scholars say: the fruits are under the seller's care and what is ruined must be foregone. Mālik said that if what is ruined is less than one-third of the deal, it is not obligatory to forego the calamity, but if it amounts to one-third or more, it must be foregone as it is under the seller's care.

Those who say that it must be foregone base their argument on the hadith that says that the Prophet 'ordered foregoing what is ruined by calamity', and that he said: 'It is not permissible for you to take anything from him'. Moreover, it is akin to what is left in the seller's possession, considering that he is responsible for its irrigation. Therefore, it is in a similar situation to what is ruined before being handed over. Scholars who maintain that it is not obligatory to forego what is ruined by calamity base their argument on hadith No. 3491 which speaks of the man who bought fruits and his debts were heavy. The Prophet urged his Companions to give him their charity and pay it to his creditors. These scholars argue that had what is ruined by calamity been foregone, there would be no need for giving the man any charity. They understand the order to forego what is ruined by calamity as one of desirability, or that it applies to what was sold before its quality has been ascertained. Such hints are included in the hadiths mentioned.

Scholars sharing the first view explain the mention in hadith No. 3491 that the man's debt became heavy, etc. They say that it is probable that the fruits in this case were ruined after they were due to be picked up, and that the buyer slackened, leaving them on the trees. As such, they were under his care and responsibility. Hence, the Prophet tells his creditors at the end of the hadith that they had nothing more than what he actually had. Had it been right that what is ruined by calamity is not foregone, the creditors would be entitled to demand the rest of what was owed to them. The other scholars respond to this argument saying that it means that the creditors could not demand more than the debtor had at the time, because he was insolvent. As such, he was entitled to be given grace, until his circumstances improved, but God knows best.

Hadith No. 3491 encourages cooperation in righteousness, helping the one in need and debtors. It also urges people to give charity to the one in debt. It is clear that it is not permissible to demand a person who is insolvent to repay his debt; nor is it permissible to stay close to him, or to imprison him. This is stated by al-Shāfiʿī, Mālik and the majority of scholars. It is reported that Ibn Shurayḥ said he may be imprisoned until he has repaid his debt, even though his insolvency is confirmed. A report suggests that Abu Ḥanīfah approved of keeping constant watch on the insolvent. The hadith shows that all the property of a bankrupt debtor is given to his creditors, if it does not repay them in full. Nothing is left to the bankrupt except his clothes and similar items. It was said that this bankrupt person was Muʿādh ibn Jabal, a learned Companion of the Prophet.

Transmission

Hadith No. 3489 goes as follows: 'Muhammad ibn ʿAbbād narrated to me: ʿAbd al-ʿAzīz ibn Muhammad narrated; from Ḥumayd; from Anas; that the Prophet (peace be upon him) said: "If God does not let it grow, what right does any of you have to take his brother's money?" Al-Dāraquṭnī said: This is an error by Muhammad ibn ʿAbbād or by ʿAbd al-ʿAzīz if he narrated it

to Muhammad ibn ʿAbbād. We know that Ibrāhīm ibn Ḥamzah listened to ʿAbd al-ʿAzīz narrating it separately, making clear that it is Anas's statement, which is right. It is not the Prophet's statement. Thus, Muhammad ibn ʿAbbād drops what the Prophet had said and narrated Anas's words, attributing them to the Prophet, which is wrong.

At the end of hadith No. 3490, we have the following 'Abu Isḥāq (who is Muslim's disciple) said: ʿAbd al-Raḥmān ibn Bishr narrated to us from Sufyān: the same'. Abu Isḥāq is Ibrāhīm ibn Muhammad ibn Sufyān who narrated Muslim's *Ṣaḥīḥ* from Muslim. What is meant here is that he added a chain of transmission with one narrator short. As such, he becomes in the same degree as Muslim, his teacher, with only one man between him and Sufyān ibn ʿUyaynah, but God knows best.

i. Related by Abu Dāwūd, 3470; al-Nasā'ī, 4540 and 4541; Ibn Mājah, 2219.
ii. Related by al-Bukhari, 2208.
iii. Related by al-Bukhari, 2198, 1488; al-Nasā'ī, 4539.
iv. Related by Abu Dāwūd in a longer version, 3374; al-Nasā'ī, 4542.

CHAPTER 4

THE DESIRABILITY OF REDUCTION OF DEBTS

[3491–18]. (Dar al-Salam 3777–3778) Qutaybah ibn Saʿīd narrated:[i] Layth narrated; from Bukayr; from ʿIyāḍ ibn ʿAbdullāh; from Abu Saʿīd al-Khudri. He said: **‘During the Prophet’s lifetime, a man endured a loss affecting fruits which he had bought, and his debts were heavy. God’s Messenger said: “Give him of your charity”. People gave him what they could, but this was not enough to settle all his debts. God’s Messenger said to his creditors: “Take whatever you find [with him]. You have nothing to claim other than that”.’**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنْ بُكَيْرٍ، عَنْ عِيَاضِ بْنِ عَبْدِ اللهِ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي ثِمَارٍ ابْتَاعَهَا، فَكَثُرَ دَيْنُهُ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «تَصَدَّقُوا عَلَيْهِ». فَتَصَدَّقَ النَّاسُ عَلَيْهِ، فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لِغُرَمَائِهِ: «خُذُوا مَا وَجَدْتُمْ، وَلَيْسَ لَكُمْ إِلاَّ ذَلِكَ».

Yūnus ibn ʿAbd al-ʿAlā’ narrated to me: ʿAbdullāh ibn Wahb reported; ʿAmr ibn al-Ḥārith narrated to me; from Bukayr ibn al-Ashajj; with the same chain of transmission: **the same text.**

حَدَّثَنِي يُونُسُ بْنُ عَبْدِ الأَعْلَى، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ، عَنْ بُكَيْرِ بْنِ الأَشَجِّ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3492–19]. (Dar al-Salam 3779) More than one of our scholars narrated to me:[ii] Ismāʿīl ibn Abi Uways narrated; my brother narrated to me; from Sulaymān (who is Ibn Bilāl); from Yaḥyā ibn Saʿīd; from Abu al-Rijāl Muhammad ibn ʿAbd al-Raḥmān; that his mother, ʿAmrah bint ʿAbd al-Raḥmān said: I heard ʿĀ'ishah say: **'God's Messenger (peace be upon him) heard the voices of disputants at the door speaking aloud. One of them was requesting the other to reduce his demand and requesting his kindness regarding something. The other was saying: "By God, I shall not do". God's Messenger went out to them and said: "Where is this person who swears to God that he will not do a kindness?" The man said: "It is I, Messenger of God. He may have whatever he prefers".'**

وَحَدَّثَنِي غَيْرُ وَاحِدٍ مِنْ أَصْحَابِنَا قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ، حَدَّثَنِي أَخِي، عَنْ سُلَيْمَانَ (وَهُوَ ابْنُ بِلاَلٍ)، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي الرِّجَالِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ، أَنَّ أُمَّهُ، عَمْرَةَ بِنْتَ عَبْدِ الرَّحْمَنِ قَالَتْ: سَمِعْتُ عَائِشَةَ تَقُولُ: سَمِعَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ صَوْتَ خُصُومٍ بِالْبَابِ، عَالِيَةً أَصْوَاتُهُمَا. وَإِذَا أَحَدُهُمَا يَسْتَوْضِعُ الآخَرَ، وَيَسْتَرْفِقُهُ فِي شَيْءٍ، وَهُوَ يَقُولُ: وَاللهِ لاَ أَفْعَلُ. فَخَرَجَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَيْهِمَا، فَقَالَ: «أَيْنَ الْـمُتَأَلِّي عَلَى اللهِ؟ لا يَفْعَلُ الْـمَعْرُوفَ!» قَالَ: أَنَا يَا رَسُولَ اللهِ، فَلَهُ أَيُّ ذَلِكَ أَحَبَّ.

[3493–20]. (Dar al-Salam 3780) Ḥarmalah ibn Yaḥyā narrated:[iii] ʿAbdullāh ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; ʿAbdullāh ibn Kaʿb ibn Mālik narrated to me. He told him

about his father, that **‘during the Prophet’s life time, he claimed in the mosque the repayment of a debt owed to him by Ibn Abi Ḥadrad. Their voices were raised, and God’s Messenger heard them while he was at home. He came out to them, lifting the curtain of his apartment. He called out to Kaʿb ibn Mālik, saying: “Yā Kaʿb”. [Kaʿb] said: “Yes, Messenger of God!” The Prophet signalled to him to waive half of his loan. Kaʿb said: “I do, Messenger of God”. The Prophet said [to the other man]: “Go and pay him”.’**

حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، حَدَّثَنِي عَبْدُ اللهِ بْنُ كَعْبِ بْنِ مَالِكٍ، أَخْبَرَهُ عَنْ أَبِيهِ، أَنَّهُ تَقَاضَى ابْنَ أَبِي حَدْرَدٍ دَيْنًا كَانَ لَهُ عَلَيْهِ، فِي عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي الْمَسْجِدِ. فَارْتَفَعَتْ أَصْوَاتُهُمَا، حَتَّى سَمِعَهَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهُوَ فِي بَيْتِهِ، فَخَرَجَ إِلَيْهِمَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، حَتَّى كَشَفَ سِجْفَ حُجْرَتِهِ، وَنَادَى كَعْبَ بْنَ مَالِكٍ فَقَالَ: «يَا كَعْبُ». فَقَالَ: لَبَّيْكَ يَا رَسُولَ اللهِ. فَأَشَارَ إِلَيْهِ بِيَدِهِ أَنْ ضَعِ الشَّطْرَ مِنْ دَيْنِكَ. قَالَ كَعْبٌ: قَدْ فَعَلْتُ يَا رَسُولَ اللهِ. قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «قُمْ فَاقْضِهِ».

[3494–21]. (Dar al-Salam 3781) Isḥāq ibn Ibrāhīm narrated: ʿUthmān ibn ʿUmar reported; Yūnus reported; from al-Zuhrī; from ʿAbdullāh ibn Kaʿb ibn Mālik; that Kaʿb ibn Mālik told him that **‘He sought the repayment of a debt owed to him by Ibn Abi Ḥadrad…’ the same text as Ibn Wahb’s narration.**

وَحَدَّثَنَاهُ إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عُثْمَانُ بْنُ عُمَرَ، أَخْبَرَنَا يُونُسُ، عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ اللهِ بْنِ كَعْبِ بْنِ مَالِكٍ، أَنَّ كَعْبَ بْنَ مَالِكٍ، أَخْبَرَهُ أَنَّهُ تَقَاضَى دَيْنًا لَهُ عَلَى ابْنِ أَبِي

حَدْرَدٍ: بِمِثْلِ حَدِيثِ ابْنِ وَهْبٍ.

[3495–000].[iv] Muslim said: And, al-Layth ibn Saʿd narrated: Jaʿfar ibn Rabīʿah narrated to me; from ʿAbd al-Raḥmān ibn Hurmuz; from ʿAbdullāh ibn Kaʿb ibn Mālik; from Kaʿb ibn Mālik that **'He was owed some money by ʿAbdullāh ibn Abi Ḥadrad al-Aslamī. He met him and stayed close to him. They disputed and their voices were raised. God's Messenger passed by them and said: "Yā Kaʿb", pointing with his hand, as if he meant half. [Kaʿb] took one half of what he was owed and wrote off one half.'**

قَالَ مُسْلِمٌ: وَرَوَى اللَّيْثُ بْنُ سَعْدٍ، حَدَّثَنِي جَعْفَرُ بْنُ رَبِيعَةَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ هُرْمُزَ، عَنْ عَبْدِ اللهِ بْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ كَعْبِ بْنِ مَالِكٍ، أَنَّهُ كَانَ لَهُ مَالٌ عَلَى عَبْدِ اللهِ بْنِ أَبِي حَدْرَدٍ الأَسْلَمِيِّ، فَلَقِيَهُ فَلَزِمَهُ، فَتَكَلَّمَا حَتَّى ارْتَفَعَتْ أَصْوَاتُهُمَا. فَمَرَّ بِهِمَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «يَا كَعْبُ». فَأَشَارَ بِيَدِهِ كَأَنَّهُ يَقُولُ النِّصْفَ. فَأَخَذَ نِصْفًا مِمَّا عَلَيْهِ، وَتَرَكَ نِصْفًا.

Text Explanation

Hadith No. 3492 mentions: 'One of them was requesting the other to reduce his demand and requesting his kindness regarding something'. This means that he requested him to reduce his loan and be kind in demanding repayment. The hadith shows that it is not wrong to seek this, provided that this does not lead to importuning, self-degradation or harming the other person, etc. but is rather needed out of necessity, but God knows best.

In the same hadith, the Prophet says to the disputants: 'Where is this person who swears to God that he will not do a kindness? The man said: "It is I, Messenger of God: he may have whatever he prefers". This clearly

indicates that it is reprehensible to swear not to do a good thing, and it is right to censure such an act. It is recommended that whoever swears not to do some good thing to break his oath, atone for it and do the good thing. The hadith also shows that it is acceptable to intercede with those who are demanding their rights and to accept such intercession if it encourages something good. The hadith further shows that it is good to reconcile disputants, intercede kindly between them, accept requests that do not involve disobedience of God, and the permissibility of using a signal to express one's request as the Prophet pointed with his hand to Kaʿb to reduce his loan by half, but God knows best.

Transmission

The chain of transmission of hadith No. 3492 begins as follows: 'More than one of our scholars narrated to me'. A number of Hadith scholars said that this is one of the twelve hadiths with 'stopped' or *maqṭūʿ* chains of transmission in Muslim's *Ṣaḥīḥ*. We explained this in the Notes in our Introduction to this commentary. Muslim does not specify from whom he heard this hadith. *Qadi* ʿIyāḍ said: 'If a narrator says, "more than one, or the reliable one, or some of our scholars narrated to me", the hadith does not fall under the categories of stopped, incomplete or problematic. It comes under "narration from an unspecified one".' What *Qadi* ʿIyāḍ says is right.

However, no matter how such a hadith is classified, its text remains unacceptable as evidence if it is not confirmed through another route. This particular hadith is also confirmed, as al-Bukhari relates it in his *Ṣaḥīḥ* as narrated by Ismāʿīl ibn Abi Uways. Perhaps by saying, 'more than one', Muslim meant al-Bukhari and others. Muslim narrates from Ismāʿīl directly in the Book of Pilgrimage and towards the end of the Book of Jihad. Muslim also narrates from Ahmad ibn Yūsuf al-Azdī from Ismāʿīl in the Book of Mutual Self-Cursing and in the Book of Merits, but God knows best.

The chain of transmission of hadith No. 3495 says: ‘Muslim said: And, al-Layth ibn Saʿd narrated: Jaʿfar ibn Rabīʿah narrated to me. This is one of the ‘stopped’ hadiths in Muslim’s *Ṣaḥīḥ*. A similar one with the same chain of transmission is included in the chapters on *tayammum*, or dry ablution. The hadith mentioned here has a complete chain of transmission from al-Layth, as it is related by al-Bukhari in his *Ṣaḥīḥ*: ‘from Yaḥyā ibn Bukayr, from al-Layth, from Jaʿfar ibn Rabīʿah’ and the rest of its chain mentioned here. It is also related by al-Nasā’ī ‘from al-Rabīʿ ibn Sulaymān, from Shuʿayb ibn al-Layth, from his father, from Jaʿfar ibn Rabīʿah’.

i. Related by Abu Dāwūd, 3469; al-Tirmidhī, 655; al-Nasā’ī, 4543 and 4692; Ibn Mājah, 2356.

ii. Related by al-Bukhari, 2705.

iii. Related by al-Bukhari, 457, 471, 2418, 2424, 2706 and 2710; Abu Dāwūd, 3595; al-Nasā’ī, 5423 and 5429; Ibn Mājah, 2429.

iv. In Dar al-Salam’s edition, this hadith is attached to the one before it.

CHAPTER 5

RECLAIMING GOODS SOLD TO A BANKRUPT

[3496–22]. (Dar al-Salam 3782) Ahmad ibn ʿAbdullāh ibn Yūnus narrated:[i] Zuhayr ibn Ḥarb narrated; Yaḥyā ibn Saʿīd narrated; Abu Bakr ibn Muhammad ibn ʿAmr ibn Ḥazm reported to me; that ʿUmar ibn ʿAbd al-ʿAzīz reported to him; that Abu Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām reported to him that he heard Abu Hurayrah say: **‘God’s Messenger (peace be upon him) said, (Or, I heard God’s Messenger say): “Whoever finds his exact property with someone (or with a person) who has become bankrupt, has more claim to it than anyone else”.’**

حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللهِ بْنِ يُونُسَ، حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، أَخْبَرَنِي أَبُو بَكْرِ بْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَخْبَرَهُ، أَنَّ أَبَا بَكْرِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ أَخْبَرَهُ، أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ - أَوْ سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ أَدْرَكَ مَالَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ، أَوْ إِنْسَانٍ قَدْ أَفْلَسَ، فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ».

[3497–000]. (Dar al-Salam 3783) Yaḥyā ibn Yaḥyā narrated: Hushaym reported [H]. Also, Qutaybah ibn Saʿīd and Muhammad ibn Rumḥ narrated; all from al-Layth ibn Saʿd [H]. And, Abu al-Rabīʿ and Yaḥyā ibn Ḥabīb al-Ḥārithī narrated; both said: Ḥammād

(meaning Ibn Zayd) narrated [H]. Further, Abu Bakr ibn Abi Shaybah narrated; Sufyān ibn ʿUyaynah narrated [H]. Also, Muhammad ibn al-Muthannā narrated; ʿAbd al-Wahhāb, Yaḥyā ibn Saʿīd and Ḥafṣ ibn Ghiyāth narrated; all of these from Yaḥyā ibn Saʿīd; with the same chain of transmission: **the same meaning as Zuhayr's narration.**

Only Ibn Rumḥ said in his narration: **'Whatever person is made bankrupt…'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا هُشَيْمٌ، ح. وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَمُحَمَّدُ بْنُ رُمْحٍ، جَمِيعًا عَنِ اللَّيْثِ بْنِ سَعْدٍ، ح. وَحَدَّثَنَا أَبُو الرَّبِيعِ، وَيَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ، قَالا: حَدَّثَنَا حَمَّادٌ (يَعْنِي ابْنَ زَيْدٍ) ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا عَبْدُ الْوَهَّابِ، وَيَحْيَى بْنُ سَعِيدٍ، وَحَفْصُ بْنُ غِيَاثٍ، كُلُّ هَؤُلاَءِ عَنْ يَحْيَى بْنِ سَعِيدٍ، فِي هَذَا الإِسْنَادِ: بِمَعْنَى حَدِيثِ زُهَيْرٍ.

وَقَالَ ابْنُ رُمْحٍ مِنْ بَيْنِهِمْ فِي رِوَايَتِهِ: أَيُّمَا امْرِئٍ فُلِّسَ.

[3498–23]. (Dar al-Salam 3784) Ibn Abi ʿUmar narrated: Hishām ibn Sulaymān (who is Ibn ʿIkrimah ibn Khālid al-Makhzūmī) narrated; from Ibn Jurayj; Ibn Abi Ḥusayn narrated to me; that Abu Bakr ibn Muhammad ibn ʿAmr ibn Ḥazm reported to him; that ʿUmar ibn ʿAbd al-ʿAzīz narrated to him; from the hadiths narrated by Abu Bakr ibn ʿAbd al-Raḥmān; from Abu Hurayrah's narrations; from the Prophet (peace be upon him) **concerning a person who has become penniless and the article [sold to him] is found with him intact, then 'it belongs to its owner who sold it'.**

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا هِشَامُ بْنُ سُلَيْمَانَ (وَهُوَ ابْنُ عِكْرِمَةَ بْنِ خَالِدٍ الْمَخْزُومِيُّ)، عَنِ ابْنِ جُرَيْجٍ، حَدَّثَنِي ابْنُ أَبِي حُسَيْنٍ، أَنَّ أَبَا بَكْرِ بْنَ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ أَخْبَرَهُ، أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ حَدَّثَهُ، عَنْ حَدِيثِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ حَدِيثِ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فِي الرَّجُلِ الَّذِي يُعْدِمُ إِذَا وُجِدَ عِنْدَهُ الْمَتَاعُ وَلَمْ يُفَرِّقْهُ: «أَنَّهُ لِصَاحِبِهِ الَّذِي بَاعَهُ».

[3499–24]. (Dar al-Salam 3785–3786) Muhammad ibn al-Muthannā narrated: Muhammad ibn Jaʿfar and ʿAbd al-Raḥmān ibn Mahdī narrated; both said: Shuʿbah narrated; from Qatādah; from al-Naḍr ibn Anas; from Bashīr ibn Nahīk; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **‘If a man has become bankrupt and someone finds with him his property itself, he has more right to it’.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ قَالا: حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهِيكٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِذَا أَفْلَسَ الرَّجُلُ، فَوَجَدَ الرَّجُلُ مَتَاعَهُ بِعَيْنِهِ، فَهُوَ أَحَقُّ بِهِ».

Zuhayr ibn Ḥarb narrated to me: Ismāʿīl ibn Ibrāhīm narrated; Saʿīd narrated [H]. Also, Zuhayr ibn Ḥarb again narrated to me; Muʿādh ibn Hishām narrated; my father narrated; both from Qatādah; with the same chain of transmission: **the same text, but both said: ‘He has more right to it than other creditors’.**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا سَعِيدٌ، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ أَيْضًا، حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ، حَدَّثَنِي أَبِي، كِلاَهُمَا عَنْ قَتَادَةَ، بِهَذَا الإِسْنَادِ: مِثْلَهُ،

وَقَالا: «فَهُوَ أَحَقُّ بِهِ مِنَ الْغُرَمَاءِ».

[3500–25]. (Dar al-Salam 3787) Muhammad ibn Ahmad ibn Abi Khalaf and Ḥajjāj ibn al-Shāʿir narrated to me: both said: Abu Salamah al-Khuzāʿī (Ḥajjāj said: Manṣūr ibn Salamah) narrated; Sulaymān ibn Bilāl reported; from Khuthaym ibn ʿIrāk; from his father; from Abu Hurayrah; that God's Messenger (peace be upon him) said: **'If a person becomes bankrupt and another person finds with him his own article, itself, he has more right to it.'**

وَحَدَّثَنِي مُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ، وَحَجَّاجُ بْنُ الشَّاعِرِ، قَالا: حَدَّثَنَا أَبُو سَلَمَةَ الْخُزَاعِيُّ. قَالَ حَجَّاجٌ مَنْصُورُ بْنُ سَلَمَةَ، أَخْبَرَنَا سُلَيْمَانُ بْنُ بِلاَلٍ، عَنْ خُثَيْمِ بْنِ عِرَاكٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِذَا أَفْلَسَ الرَّجُلُ، فَوَجَدَ الرَّجُلُ عِنْدَهُ سِلْعَتَهُ بِعَيْنِهَا، فَهُوَ أَحَقُّ بِهَا».

Text Explanation

Scholars hold different views concerning a person who buys some goods, then becomes bankrupt or dies without having paid for such goods and does not have the money to pay for them, with the goods remaining in the same condition. Al-Shāfiʿī and a number of scholars say that the seller has a choice: he may leave it and compete with other creditors for its price, or he may reclaim in both cases of bankruptcy and death. Abu Ḥanīfah said: 'he cannot go back on the sale and reclaim the goods; he must compete with other creditors.' Mālik said that the seller may reclaim the goods in the case of bankruptcy and should compete with creditors in the case of the buyer's death.

Al-Shāfiʿī bases his view on these hadiths and also in the case of death he cites a hadith related in Abu Dāwūd's *Sunan* and other anthologies. Abu Ḥanīfah gives some weak interpretations that cannot stand. He cites some report attributed to ʿAlī and Ibn Masʿūd, but it is not confirmed to have been said by either.

Transmission

The chain of transmission of hadith No. 3496 runs as follows: 'Ahmad ibn ʿAbdullāh ibn Yūnus narrated: Zuhayr ibn Ḥarb narrated; Yaḥyā ibn Saʿīd narrated; Abu Bakr ibn Muhammad ibn ʿAmr ibn Ḥazm reported to me; that ʿUmar ibn ʿAbd al-ʿAzīz reported to him; that Abu Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām reported to him that he heard Abu Hurayrah say'. This chain of transmission includes four narrators who belonged to the *tābiʿīn* generation, reporting from each other. These are Yaḥyā ibn Saʿīd al-Anṣārī, Abu Bakr ibn Muhammad ibn ʿAmr, ʿUmar ibn ʿAbd al-ʿAzīz and Abu Bakr ibn ʿAbd al-Raḥmān. We pointed out similar examples before.

Hadith No. 3499 has several chains of transmission. The first is as follows: 'Muhammad ibn al-Muthannā narrated: Muhammad ibn Jaʿfar and ʿAbd al-Raḥmān ibn Mahdī narrated; both said: Shuʿbah narrated; from Qatādah; from al-Naḍr ibn Anas…'. The second chain states: 'Zuhayr ibn Ḥarb narrated to me: Ismāʿīl ibn Ibrāhīm narrated; Saʿīd narrated'. This is how it occurs in all manuscripts in our areas: the first chain mentions Shuʿbah, who is Shuʿbah ibn al-Ḥajjāj, and the second mentions Saʿīd, who is Saʿīd ibn Abi ʿArūbah. *Qadi* ʿIyāḍ mentions this second version as narrated by al-Julūdī, then says: 'In Ibn Māhān's narration, the name occurs as Shuʿbah, but the first is the correct one'.

The chain of transmission of hadith No. 3500 goes as follows: 'Muhammad ibn Ahmad ibn Abi Khalaf and Ḥajjāj ibn al-Shāʿir narrated to me: both said: Abu Salamah al-Khuzāʿī (Ḥajjāj said: Manṣūr ibn Salamah) narrated; Sulaymān ibn Bilāl reported'. This is how it occurs in most copies

in our areas and their checked originals, stating: ‘Ḥajjāj said: Manṣūr ibn Salamah’. This means that Abu Salamah al-Khuzāʿī is actually named Manṣūr ibn Salamah. When narrating the hadith, Muhammad ibn Abi Khalaf mentions him by his appellation, or *kunyah*, while Ḥajjāj mentions his name. This is correct. *Qadi* ʿIyāḍ mentions that in most copies in their areas and according to most of their narrators, it occurs as: ‘Ḥajjāj said: Manṣūr ibn Salamah narrated’, adding the word ‘narrated’. *Qadi* ʿIyāḍ said that the correct way is to delete it, as this is done by some narrators. He adds: This second way may be understood in the same way as the first, meaning that Muhammad ibn Ahmad used his appellation while Ḥajjāj used his name.

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i. Related by al-Bukhari, 2402; Abu Dāwūd, 3519, 3520, 3521 and in a similar version 3522; al-Tirmidhī, 1262; al-Nasā’ī, 4690 and in a similar version 4691; Ibn Mājah in a similar version, 2359.

CHAPTER 6

DELAYING DEBT REPAYMENT

[3501–26]. (Dar al-Salam 3788) Ahmad ibn ʿAbdullāh ibn Yūnus narrated:[i] Zuhayr narrated; Manṣūr narrated; from Ribʿī ibn Ḥirāsh; that Ḥudhayfah narrated. He said: **‘God’s Messenger (peace be upon him) said: “The angels received the soul of a man belonging to a past community”. They said: “Have you done any good things?” He said: “No”. They said: “Try to remember”. He said: “I used to lend money to people, and I would order my servants to give more time to the one who is in straitened circumstances and to be lenient with the one in money”. God, Mighty and Exalted, said: “Be lenient with him”.’**

حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللهِ بْنِ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا مَنْصُورٌ، عَنْ رِبْعِيِّ بْنِ حِرَاشٍ أَنَّ حُذَيْفَةَ حَدَّثَهُمْ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «تَلَقَّتِ الْـمَلاَئِكَةُ رُوحَ رَجُلٍ مِمَّنْ كَانَ قَبْلَكُمْ، فَقَالُوا: أَعَمِلْتَ مِنَ الْخَيْرِ شَيْئًا؟ قَالَ لا. قَالُوا: تَذَكَّرْ. قَالَ: كُنْتُ أُدَايِنُ النَّاسَ، فَآمُرُ فِتْيَانِي أَنْ يُنْظِرُوا الْـمُعْسِرَ، وَيَتَجَوَّزُوا عَنِ الْـمُوسِرِ. قَالَ: قَالَ اللهُ عَزَّ وَجَلَّ: تَجَوَّزُوا عَنْهُ.

[3502–27]. (Dar al-Salam 3789) ʿAlī ibn Ḥujr and Isḥāq ibn Ibrāhīm narrated (Ibn Ḥujr’s text): both said: Jarīr narrated; from al-Mughīrah; from Nuʿaym ibn Abi Hind; from Ribʿī ibn Ḥirāsh.

He said: ‘Ḥudhayfah and Abu Masʿūd met. Ḥudhayfah said: **‘A man stood before his Lord and He asked him: “What did you do?” He said: “I did not do much good, except that I was wealthy and I used to claim my dues from people. I would accept what is available and write off for the one in straitened circumstances”. He said: “Write off for My servant”. Abu Masʿūd said: “This is what I heard God’s Messenger (peace be upon him) say”.’**

حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، (وَاللَّفْظُ لِابْنِ حُجْرٍ) قَالا: حَدَّثَنَا جَرِيرٌ، عَنِ الْـمُغِيرَةِ، عَنْ نُعَيْمِ بْنِ أَبِي هِنْدٍ، عَنْ رِبْعِيِّ بْنِ حِرَاشٍ، قَالَ: اجْتَمَعَ حُذَيْفَةُ وَأَبُو مَسْعُودٍ، فَقَالَ حُذَيْفَةُ: «رَجُلٌ لَقِيَ رَبَّهُ، فَقَالَ مَا عَمِلْتَ؟ قَالَ مَا عَمِلْتُ مِنَ الْخَيْرِ إِلاَّ أَنِّي كُنْتُ رَجُلاً ذَا مَالٍ، فَكُنْتُ أُطَالِبُ بِهِ النَّاسَ. فَكُنْتُ أَقْبَلُ الْـمَيْسُورَ، وَأَتَجَاوَزُ عَنِ الْـمَعْسُورِ. فَقَالَ: تَجَاوَزُوا عَنْ عَبْدِي». قَالَ أَبُو مَسْعُودٍ: هَكَذَا سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ.

[3503–28]. (Dar al-Salam 3790) Muhammad ibn al-Muthannā narrated: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from ʿAbd al-Malik ibn ʿUmayr; from Ribʿī ibn Ḥirāsh; from Ḥudhayfah; from the Prophet (peace be upon him) that **‘A man died and he was admitted into heaven. He was asked: “What did you do?” (He said: either he remembered or he was reminded), and he said: “I used to sell to people, and I would give time to the one who was in straitened circumstances, making a reduction in money”. He was forgiven [his sins]. Abu Masʿūd said: “And I heard this from God’s Messenger (peace be upon him)”.’**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ عَبْدِ الْـمَلِكِ بْنِ عُمَيْرٍ، عَنْ رِبْعِيِّ بْنِ حِرَاشٍ، عَنْ حُذَيْفَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَنَّ رَجُلاً مَاتَ فَدَخَلَ الْجَنَّةَ. فَقِيلَ لَهُ: مَا كُنْتَ تَعْمَلُ؟ قَالَ: فَإِمَّا ذَكَرَ وَإِمَّا ذُكِّرَ، فَقَالَ: إِنِّي كُنْتُ أُبَايِعُ النَّاسَ، فَكُنْتُ أُنْظِرُ الْـمُعْسِرَ، وَأَتَجَوَّزُ فِي السِّكَّةِ أَوْ فِي النَّقْدِ. فَغُفِرَ لَهُ». فَقَالَ أَبُو مَسْعُودٍ: وَأَنَا سَمِعْتُهُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3504–29]. (Dar al-Salam 3791) Abu Saʿīd al-Ashajj narrated: Abu Khāid al-Aḥmar narrated; from Saʿd ibn Ṭāriq; from Ribʿī ibn Ḥirāsh; from Ḥudhayfah. He said: **‘God was brought one of His servants whom He had given [plentiful] money. He asked him: “What did you do in life?” (He said: they shall be able to conceal nothing from God). He said: “My Lord, You granted me Your money and I used to deal with people. I used to be lenient; I would give easy terms to the one in money and would give time to the one in straitened circumstances”. God said: “This is more of My prerogative than yours. Write off My servant’s [sins]”.’**

ʿUqbah ibn ʿĀmir al-Juhanī and Abu Masʿūd al-Anṣārī said: **‘This is how we heard it from God’s Messenger’s mouth’.**

حَدَّثَنَا أَبُو سَعِيدٍ الأَشَجُّ، حَدَّثَنَا أَبُو خَالِدٍ الأَحْمَرُ، عَنْ سَعْدِ بْنِ طَارِقٍ، عَنْ رِبْعِيِّ بْنِ حِرَاشٍ، عَنْ حُذَيْفَةَ، قَالَ: «أُتِيَ اللهُ بِعَبْدٍ مِنْ عِبَادِهِ، آتَاهُ اللهُ مَالاً، فَقَالَ لَهُ: مَاذَا عَمِلْتَ فِي الدُّنْيَا؟ - قَالَ: وَلاَ يَكْتُمُونَ اللهَ حَدِيثًا – قَالَ: يَا رَبِّ آتَيْتَنِي مَالَكَ، فَكُنْتُ أُبَايِعُ النَّاسَ وَكَانَ مِنْ خُلُقِي الْجَوَازُ. فَكُنْتُ أَتَيَسَّرُ عَلَى الْـمُوسِرِ، وَأُنْظِرُ الْـمُعْسِرَ. فَقَالَ اللهُ: أَنَا أَحَقُّ بِذَا مِنْكَ. تَجَاوَزُوا عَنْ عَبْدِي».

فَقَالَ عُقْبَةُ بْنُ عَامِرٍ الْجُهَنِيُّ وَأَبُو مَسْعُودٍ الأَنْصَارِيُّ: هَكَذَا سَمِعْنَاهُ مِنْ فِي رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3505–30]. (Dar al-Salam 3792) Yaḥyā ibn Yaḥyā, Abu Bakr ibn Abi Shaybah, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated (Yaḥyā's text):[ii] Abu Muʿāwiyah (Yaḥyā said: 'reported' and the others said: 'narrated'); from al-Aʿmash; from Shaqīq; from Abu Masʿūd; that God's Messenger (peace be upon him) said: **'A man from a past community was brought to account. Nothing good was found to his credit, except that he used to deal with people and he was wealthy. He used to command his servants to write off [debt] for whoever was insolvent. God, Mighty and Exalted, said: "This is more suitable for Us than him. Write off [his sins]".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيم (وَاللَّفْظُ لِيَحْيَى). (قَالَ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ شَقِيقٍ، عَنْ أَبِي مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «حُوسِبَ رَجُلٌ مِمَّنْ كَانَ قَبْلَكُمْ، فَلَمْ يُوجَدْ لَهُ مِنَ الْخَيْرِ شَيْءٌ، إِلاَّ أَنَّهُ كَانَ يُخَالِطُ النَّاسَ، وَكَانَ مُوسِرًا. فَكَانَ يَأْمُرُ غِلْمَانَهُ أَنْ يَتَجَاوَزُوا عَنِ الْـمُعْسِرِ. قَالَ: قَالَ اللهُ عَزَّ وَجَلَّ: نَحْنُ أَحَقُّ بِذَلِكَ مِنْهُ، تَجَاوَزُوا عَنْهُ.

[3506–31]. (Dar al-Salam 3793–3794) Manṣūr ibn Abi Muzāḥim and Muhammad ibn Jaʿfar ibn Ziyād narrated:[iii] Ibrāhīm ibn Saʿd (Manṣūr said: Ibrāhīm ibn Saʿd narrated from al-Zuhrī, and Ibn Jaʿfar said: Ibrāhīm (who is Ibn Saʿd) reported from Ibn Shihāb); from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah; from Abu Hurayrah; that God's Messenger (peace be upon him) said: **'A man used to lend people. He used to tell his servant: "If you find someone in**

straitened circumstances, pardon him. God may hopefully pardon us. When he met God, He pardoned him”.’

حَدَّثَنَا مَنْصُورُ بْنُ أَبِي مُزَاحِمٍ، وَمُحَمَّدُ بْنُ جَعْفَرِ بْنِ زِيَادٍ. قَالَ مَنْصُورٌ حَدَّثَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنِ الزُّهْرِيِّ، وَقَالَ ابْنُ جَعْفَرٍ أَخْبَرَنَا إِبْرَاهِيمُ (وَهُوَ ابْنُ سَعْدٍ) عَنِ ابْنِ شِهَابٍ، عَنِ عُبَيْدِ اللهِ بْنِ عَبْدِ اللهِ بْنِ عُتْبَةَ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «كَانَ رَجُلٌ يُدَايِنُ النَّاسَ، فَكَانَ يَقُولُ لِفَتَاهُ: إِذَا أَتَيْتَ مُعْسِرًا فَتَجَاوَزْ عَنْهُ، لَعَلَّ اللهَ يَتَجَاوَزُ عَنَّا. فَلَقِيَ اللهَ فَتَجَاوَزَ عَنْهُ.

Ḥarmalah ibn Yaḥyā narrated to me: ʿAbdullāh ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; that ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah narrated to him; that he heard Abu Hurayrah say: **‘I heard God’s Messenger (peace be upon him) say…’ the same text.**

حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، أَنَّ عُبَيْدَ اللهِ بْنَ عَبْدِ اللهِ بْنِ عُتْبَةَ حَدَّثَهُ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: بِمِثْلِهِ.

[3504–32]. (Dar al-Salam 3795) Abu al-Haytham Khālid ibn Khidāsh ibn ʿAjlān narrated: Ḥammād ibn Zayd narrated; from Ayyūb; from Yaḥyā ibn Abi Kathīr; from ʿAbdullāh ibn Abi Qatādah; that **‘Abu Qatādah sought a debtor of his but he hid himself. He then found him and the debtor said: “I am in straitened circumstances”. He [i.e., Abu Qatādah] said: “By God, [are you so]?” The man said: “By God”. He said: “I heard God’s Messenger (peace be upon him) say: ‘Whoever is pleased**

that God saves him from the distress of the Day of Judgement, should give respite to the one in straitened circumstances, or reduce his debt'."'

حَدَّثَنَا أَبُو الْهَيْثَمِ، خَالِدُ بْنُ خِدَاشِ بْنِ عَجْلاَنَ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ عَبْدِ اللهِ بْنِ أَبِي قَتَادَةَ، أَنَّ أَبَا قَتَادَةَ طَلَبَ غَرِيمًا لَهُ، فَتَوَارَى عَنْهُ. ثُمَّ وَجَدَهُ فَقَالَ: إِنِّي مُعْسِرٌ. فَقَالَ: آللهِ؟ قَالَ: آللهِ. قَالَ: فَإِنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ سَرَّهُ أَنْ يُنْجِيَهُ اللهُ مِنْ كُرَبِ يَوْمِ الْقِيَامَةِ، فَلْيُنَفِّسْ عَنْ مُعْسِرٍ أَوْ يَضَعْ عَنْهُ».

Abu al-Ṭāhir narrated: Ibn Wahb reported; Jarīr ibn Ḥāzim reported to me; from Ayyūb; with the same chain of transmission: **a similar text.**

وَحَدَّثَنِيهِ أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ، عَنْ أَيُّوبَ، بِهَذَا الإِسْنَادِ نَحْوَهُ

Text Explanation

These hadiths highlight the importance of dealing easily with one's debtors. The man mentions that he would accept whatever was available and would remit some or all of what he was owed, if he ascertained that the debtor was insolvent. Whether the debtor is in money or in straitened circumstances, going easy on him is a commendable characteristic. The sum of what these hadiths recommend is to allow the debtor time if he cannot repay his debt when it falls due, and to accept any partial payment he can give. If one is able to forego some of what he is owed and the debtor is in difficulty, this is highly commendable. One should not disdain to do any favour, even if it is

small. Such a small favour may be one's way to happiness in the life to come.

These hadiths show that it is permissible to delegate the authority to remit part or all of one's loan to one's agent or servant.

The last hadith, No. 3507, raises the prospect of removing distress on the Day of Judgement. This is earned by a person who is kind to his debtors. He gives respite to the one who is insolvent, allowing him time until he is in better circumstances or, better still, he remits a portion of his loan or all of it, but God knows best.

Transmission

Hadith No. 3504 starts with the following chain of transmission: 'Abu Saʿīd al-Ashajj narrated: Abu Khāid al-Aḥmar narrated; from Saʿd ibn Ṭāriq; from Ribʿī ibn Ḥirāsh; from Ḥudhayfah'. Then at the end of the hadith we have the following: ''Uqbah ibn ʿĀmir al-Juhanī and Abu Masʿūd al-Anṣārī said: This is how we heard it from God's Messenger's mouth'. This is how it occurs, but scholars of Hadith say that this hadith is known to be narrated only by Abu Masʿūd ʿUqbah ibn ʿAmr, an Anṣārī Companion of the Prophet who took part in the Battle of Badr. As for ʿUqbah ibn ʿĀmir, he never narrated it. Al-Dāraquṭnī said: 'The mistake in this chain of transmission is made by Abu Khālid al-Aḥmar. The correct wording is "'Uqbah ibn ʿAmr Abu Masʿūd al-Anṣārī". This is how it is narrated by the narrators from Saʿd ibn Ṭāriq, and also by Nuʿaym ibn Abi Hind, ʿAbd al-Malik ibn ʿUmayr, Manṣūr and others from Ribʿī, from Hudhayfah, all saying at the end of the hadith: "'Uqbah ibn ʿAmr Abu Masʿūd said…". Muslim relates in this chapter the hadiths narrated by Manṣūr, Nuʿaym and ʿAbd al-Malik, but God knows best.

i. Related by al-Bukhari, 2077, 3451 and in a similar version 2391; Ibn Mājah in a similar version, 2420.

ii. Related by al-Tirmidhī, 1307.

iii. Related by al-Bukhari, 2078 and 3480; al-Nasā'ī, 4709.

CHAPTER 7

THE PROHIBITION OF DELAYING REPAYMENT, AND THE VALIDITY OF TRANSFER

[3508–33]. (Dar al-Salam 3796–3797) Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik; from Abu al-Zināد; from al-Aʿraj; from Abu Hurayrah; that God's Messenger (peace be upon him) said: **'Delaying debt repayment by one who is in money is injustice. If any of you is referred to one who is in plenty, let him take it up'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ أَبِي الزِّنَادِ، عَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَطْلُ الْغَنِيِّ ظُلْمٌ، وَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيءٍ، فَلْيَتْبَعْ».

Isḥāq ibn Ibrāhīm narrated: ʿĪsā narrated; from Yūnus [H]. Also, Muhammad ibn Rāfiʿ narrated; ʿAbd al-Razzāq narrated; both said: Maʿmar narrated; from Hammām ibn Munabbih; from Abu Hurayrah; from the Prophet (peace be upon him): **the same text.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، قَالا جَمِيعًا: حَدَّثَنَا مَعْمَرٌ، عَنْ هَمَّامِ بْنِ مُنَبِّهٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ

عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ.

Text Explanation

According to *Qadi* ʿIyāḍ and other scholars, the delay referred to in this hadith is the withholding of a payment that is due to be repaid. If the debtor is in good circumstances and able to pay, then to delay payment is unjust and forbidden. If one is unable to pay, then the lack of repayment is neither unjust nor forbidden, according to what is understood from this hadith and because of the person's valid excuse. If the debtor is rich but is unable to repay, because he has no access to his money or for some other reason, it is permissible for him to delay repayment until he has such access. This is considered as a special case of delayed payment by a rich person. Alternatively, a rich person should be defined as one who has no encumbrance preventing repayment. Some scholars say that the hadith provides evidence endorsing the view of Mālik, al-Shāfiʿī and the majority of scholars who say that it is not permissible to imprison or keep constant watch over an insolvent debtor, or to demand repayment until he is in funds. This point was discussed in the chapter relating to bankruptcy.

Mālikī and other scholars differ as to whether a debtor who unjustifiably delays repayment is considered a transgressor, or *fāsiq*, whose testimony is unacceptable if he does this once, or is it such whereby his testimony is not rejected until such action is repeated and becomes a habit. The view of our Shāfiʿī School is that repeated delay is a condition.

A different hadith related in other anthologies states: 'Delayed repayment by one in money permits verbally abusing him and his punishment'. Scholars say that verbal abuse means that the creditor may say: 'He is unfair to me' and 'He is refusing to repay me my right'. His punishment is imprisonment or other such discretionary action.

The hadith also makes clear that it is permissible to refer the creditor to someone else who is well placed to repay him. It is desirable for the creditor

to accept such transfer of his debt. This is the view of our scholars and the majority, understanding the hadith as recommending such acceptance. However, some scholars say that it is only permissible, not recommended. Some others claim that acceptance of such transfer is a duty, according to the apparent meaning of the hadith. This is the view of Dāwūd and other Ẓāhirī scholars.

CHAPTER 8

THE PROHIBITION OF SELLING AND WITHHOLDING EXCESS WATER NEEDED FOR GRASS IRRIGATION

[3509–34]. (Dar al-Salam 3798) Abu Bakr ibn Abi Shaybah narrated: Wakīʿ reported [H]. Also, Muhammad ibn Ḥātim narrated to me; Yaḥyā ibn Saʿīd narrated; all from Ibn Jurayj; from Abu al-Zubayr; from Jābir ibn ʿAbdullāh. He said: **'God's Messenger (peace be upon him) prohibited the sale of excess water'.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، أَخْبَرَنَا وَكِيعٌ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، جَمِيعًا عَنِ ابْنِ جُرَيْجٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ فَضْلِ الْمَاءِ.

[3510–35]. (Dar al-Salam 3799) Isḥāq ibn Ibrāhīm narrated: Rawḥ ibn ʿUbādah; Ibn Jurayj narrated; Abu al-Zubayr reported to me; that he heard Jābir ibn ʿAbdullāh say: **'God's Messenger (peace be upon him) prohibited the selling of a camel's mating, excess water and renting land for farming. The Prophet prohibited all these'.**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ ضِرَابِ

الْجَمَلِ، وَعَنْ بَيْعِ الْـمَاءِ، وَالأَرْضِ لِتُحْرَثَ. فَعَنْ ذَلِكَ نَهَى النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3511–36]. (Dar al-Salam 3800) Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik [H]. Also, Qutaybah narrated; Layth narrated; both from Abu al-Zinād; from al-Aʿraj; from Abu Hurayrah; that God's Messenger (peace be upon him) said: **'Excess water may not be withheld so as to prevent grazing.'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ ح. وَحَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا لَيْثٌ، كِلاَهُمَا عَنْ أَبِي الزِّنَادِ، عَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا يُمْنَعُ فَضْلُ الْـمَاءِ لِيُمْنَعَ بِهِ الْكَلأُ».

[3512–37]. (Dar al-Salam 3801) Abu al-Ṭāhir and Ḥarmalah narrated to me (Ḥarmalah's text): Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; Saʿīd ibn al-Musayyib and Abu Salamah ibn ʿAbd al-Raḥmān narrated to me; that Abu Hurayrah said: **'God's Messenger (peace be upon him) said: "Do not withhold excess water in order to prevent grazing".'**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ (وَاللَّفْظُ لِحَرْمَلَةَ)، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، حَدَّثَنِي سَعِيدُ بْنُ الْـمُسَيَّبِ وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَمْنَعُوا فَضْلَ الْـمَاءِ لِتَمْنَعُوا بِهِ الْكَلأَ».

[3513–38]. (Dar al-Salam 3802) Ahmad ibn ʿUthmān al-Nawfalī narrated: Abu ʿĀṣim al-Ḍaḥḥāk ibn Makhlad narrated; Ibn Jurayj narrated; Ziyād ibn Saʿd reported to me; that Hilāl ibn Usāmah reported to him; that Abu Salamah ibn ʿAbd al-Raḥmān reported to

him; that he heard Abu Hurayrah say: **‘God’s Messenger (peace be upon him) said: “Excess water may not be sold so as to sell the grass with it”.’**

وَحَدَّثَنَا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ، حَدَّثَنَا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي زِيَادُ بْنُ سَعْدٍ، أَنَّ هِلاَلَ بْنَ أُسَامَةَ أَخْبَرَهُ، أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ أَخْبَرَهُ، أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا يُبَاعُ فَضْلُ الْـمَاءِ لِيُبَاعَ بِهِ الْكَلأُ».

Text Explanation

Hadith No. 3510 mentions the prohibition of selling excess water so as to prevent grazing. This refers to a case whereby a person owns a well in an open area, with the well producing water in excess of what its owner needs. In the nearby area there is a meadow where there is no water other than this well. People with cattle cannot allow their cattle to graze unless they have the cattle drinking water from this well. It is forbidden for the owner of the well to withhold his excess water, preventing the cattle drinking it. He must make it available for free. The reason is that if he withholds the water, people will not let their cattle graze fearing that they will be very thirsty. Thus, the well owner prevents cattle grazing by withholding his excess water. The first Hadith, No. 3509, merely prohibits selling excess water. It should be understood in terms of the second hadith, which explains the prevention of cattle grazing. However, if we take this hadith independently, we would say that it should be understood as discouragement, rather than total prohibition.

Scholars of our Shāfiʿī School say: Excess water in an open area must be made freely available, under certain conditions. These are: 1) that there is no other source of water which would provide what is needed; 2) the

excess water should be made available for the cattle to drink, not to irrigate plants, and 3) the owner does not need it.

The correct view is that where a spring of water happens to be on a person's property, that person owns the water. Some of our scholars say that he does not own it. However, if he takes the free water in a container, he owns that water. This is the correct view, and some scholars say that it is unanimously agreed upon. Some of our scholars have said that he does not own that water, but he does have more claim to it. This is manifestly wrong.

Hadith No. 3513 says: 'Excess water may not be sold so as to sell the grass with it'. This means that if there is some excess water in an open area and there is grass nearby but cattle cannot graze there unless they can drink from that water, it is the owner's duty to make his water available to the cattle to drink, without charging anything. It is forbidden for him to sell the water, because if he sells it, it would be as if he is selling the grass which is free to all people and not owned by the one who is selling. The reason is that the cattle owners do not pay for the water merely because they want the water, but rather that they pay for it so that their cattle can graze. Their purpose is the grazing. This places the owner of the water in the position of one who is selling free grass, but God knows best.

Hadith No. 3510 includes that the Prophet prohibited renting land for cultivation. The literal meaning of the words used in the hadith is that the Prophet prohibited 'selling the land for cultivation'. What is meant, though, is renting it for that purpose. We have discussed this in detail in the chapter on renting land. We mentioned that the majority of scholars permit renting land for money, clothing, or some similar thing. They understand the restriction in two ways: the first is that it is mere discouragement, as the Prophet wanted Muslims to adopt the practice of lending land and helping one another out. The second is a prohibition of renting it in return for the owner having the produce of a particular area of it, because it is not permissible to rent land if the rent is to give the owner a portion of its produce, but God knows best.

The same hadith includes the prohibition of ‘selling a camel’s mating’. This means getting a fee, for a male camel borrowed for mating with another person’s she-camels. Scholars hold different views concerning renting a male camel, or other male animals for mating. Al-Shāfiʿī, Abu Ḥanīfah, Abu Thawr and others say that renting such males for this purpose is invalid and forbidden. No fee needs to be paid to the owner. If the one renting it manages to get the male animal to mate with his females, he does not owe the agreed fee, or a fee of a similar animal or any compensation whatsoever, because it is an agreement on something unknown and undeliverable. However, a number of the Prophet’s Companions and *tābiʿīn*, as well as Mālik and some other scholars said: it is permissible to rent a male camel or animal for the purpose of mating, for a fixed period of time, or for an agreed number of matings, because there is need for it and it provides a necessary benefit. These scholars understand the prohibition in the hadith as mere discouragement, as the Prophet was keen to encourage good manners and cooperation within the community. They treat it in the same way as what is mentioned in the same hadith about renting land, but God knows best.

CHAPTER 9

THE PROHIBITION OF A DOG'S PRICE, A FORTUNE TELLER'S FEE AND A PROSTITUTE'S DOWRY

[3514–39]. (Dar al-Salam 3803–3804) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Ibn Shihāb; from Abu Bakr ibn ʿAbd al-Raḥmān; from Abu Masʿūd al-Anṣārī; that **'God's Messenger prohibited taking a dog's price, a prostitute's dowry and a fortune teller's fee'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي مَسْعُودٍ الأَنْصَارِيِّ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ ثَمَنِ الْكَلْبِ، وَمَهْرِ الْبَغِيِّ، وَحُلْوَانِ الْكَاهِنِ.

Qutaybah ibn Saʿīd and Muhammad ibn Rumḥ narrated; from al-Layth ibn Saʿd [H]. Also, Abu Bakr ibn Abi Shaybah narrated; Sufyān ibn ʿUyaynah narrated; both from al-Zuhrī; with this chain of transmission: **the same text**.

In al-Layth's narration from Ibn Rumḥ the narrator mentions that **'he heard Abu Masʿūd say'.**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَمُحَمَّدُ بْنُ رُمْحٍ، عَنِ اللَّيْثِ بْنِ سَعْدٍ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، كِلاَهُمَا عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

وَفِي حَـدِيثِ اللَّيْـثِ مِنْ رِوَايَـةِ ابْنِ رُمْـحٍ أَنَّهُ سَـمِعَ أَبَا مَسْـعُودٍ.

[3515–40]. (Dar al-Salam 3805) Muhammad ibn Ḥātim narrated to me:[ii] Yaḥyā ibn Saʿīd al-Qaṭṭān narrated; from Muhammad ibn Yūsuf; he said: I heard al-Sā'ib ibn Yazīd narrating from Rāfiʿ ibn Khadīj. He said: **'I heard the Prophet (peace be upon him) say: "The most foul of earnings are a prostitute's dowry, a dog's price and the fee of the one who administers cupping".'**

وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، عَنْ مُحَمَّدِ بْنِ يُوسُفَ، قَالَ سَمِعْتُ السَّائِبَ بْنَ يَزِيدَ يُحَدِّثُ، عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: سَمِعْتُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «شَرُّ الْكَسْبِ مَهْرُ الْبَغِيِّ، وَثَمَنُ الْكَلْبِ، وَكَسْبُ الْحَجَّامِ».

[3516–41]. (Dar al-Salam 3806–3807) Isḥāq ibn Ibrāhīm narrated: al-Walīd ibn Muslim reported; from al-Awzāʿī; from Yaḥyā ibn Abi Kathīr; Ibrāhīm ibn Qāriẓ narrated to me; from al-Sā'ib ibn Yazīd; Rāfiʿ ibn Khadīj narrated to me; from God's Messenger (peace be upon him). He said: **'A dog's price is foul; a prostitute's dowry is foul; and the fee of one who administers cupping is foul.'**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا الْوَلِيدُ بْنُ مُسْلِمٍ، عَنِ الأَوْزَاعِيِّ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، حَدَّثَنِي إِبْرَاهِيمُ بْنُ قَارِظٍ، عَنِ السَّائِبِ بْنِ يَزِيدَ، حَدَّثَنِي رَافِعُ بْنُ خَدِيجٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «ثَمَنُ الْكَلْبِ خَبِيثٌ، وَمَهْرُ الْبَغِيِّ خَبِيثٌ، وَكَسْبُ الْحَجَّامِ خَبِيثٌ».

Isḥāq ibn Ibrāhīm narrated; ʿAbd al-Razzāq reported; Maʿmar reported; from Yaḥyā ibn Abi Kathīr; with the same chain of

transmission: **the same text.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

Isḥāq ibn Ibrāhīm narrated; al-Naḍr ibn Shumayl reported; Hishām narrated; from Yaḥyā ibn Abi Kathīr; Ibrāhīm ibn ʿAbdullāh narrated to me; from al-Sā'ib ibn Yazīd; Rāfiʿ ibn Khadīj narrated; from God's Messenger (peace be upon him): **the same text.**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا النَّضْرُ بْنُ شُمَيْلٍ، حَدَّثَنَا هِشَامٌ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، حَدَّثَنِي إِبْرَاهِيمُ بْنُ عَبْدِ اللهِ، عَنِ السَّائِبِ بْنِ يَزِيدَ، حَدَّثَنَا رَافِعُ بْنُ خَدِيجٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ.

[3517–42]. (Dar al-Salam 3808) Salamah ibn Shabīb narrated to me: al-Ḥasan ibn Aʿyan narrated; Maʿqil narrated; from Abu al-Zubayr. He said: **'I asked Jābir about the price of a dog and a cat. He said: "The Prophet (peace be upon him) censured taking it".'**

حَدَّثَنِي سَلَمَةُ بْنُ شَبِيبٍ، حَدَّثَنَا الْحَسَنُ بْنُ أَعْيَنَ، حَدَّثَنَا مَعْقِلٌ، عَنْ أَبِي الزُّبَيْرِ قَالَ: سَأَلْتُ جَابِرًا عَنْ ثَمَنِ الْكَلْبِ، وَالسِّنَّوْرِ. قَالَ: زَجَرَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ ذَلِكَ.

Text Explanation

The term 'prostitute's dowry' refers to what she charges for adulterous sexual intercourse. It is called 'dowry' in these hadiths because the process

of exchange is similar. It is forbidden according to the unanimous view of all Muslims.

A fortune teller's fee is what he is given for what he says. The term used in the hadith, *ḥulwān*, is derived from a root which means 'sweet', as if his fee is a sweetener which he is given for what he says without having to undertake any effort. The same word is used to refer to what a man takes if he takes his daughter's dowry for himself, although she is the one entitled to it. Women consider this a shameful act. Al-Baghawī, who is a Shāfiʿī scholar, and *Qadi* ʿIyāḍ said that all Muslims say that the fortune teller's fee is forbidden because it is a fee for doing what is forbidden, and charging money on false pretences. Muslims also agree that it is forbidden to give a singer a fee for her singing, or a wailer for her lamentation. The hadiths related in different anthologies, prohibiting the earnings of slave girls refer to earnings through fornication and other forbidden practices, rather than earnings for proper work, such as sewing, embroidery, etc. Al-Khaṭṭābī said that a fee paid to a clairvoyant is also forbidden. The difference between a clairvoyant and a fortune teller is that the fortune teller speaks about future events and claims to know secrets, whereas a clairvoyant claims to know where stolen goods are to be found, and where a lost article is located, etc.

Al-Khaṭṭābī mentions this in his *Maʿālim al-Sunan*, Book of Sales. He mentions it in a simpler form towards the end of the book, saying:

> A fortune teller claims to have access to knowledge belonging to the world beyond human perception and tells people about future events. The Arabs had such fortune tellers who claimed to know many things, and some of them alleged that they had cronies among the jinn who brought them news. Others claimed to have insight into things through a special faculty they had. Some were called clairvoyants who knew things through connecting their preliminaries. Thus, if something was stolen, a clairvoyant might be able to identify the one who was thought to have stolen it; or a woman might be accused of infidelity, and the clairvoyant might point out her associate, etc. Some

> called the astrologer a fortune teller…. The hadith prohibiting consulting a fortune teller includes consulting any of these and believing anything they say. Some Arabs called a doctor a fortune teller or a clairvoyant, but he is neither and consulting a doctor is not included in the Prophet's prohibition.

Towards the end of his book, *al-Aḥkām al-Sulṭāniyyah*, Abu al-Ḥasan al-Māwardī says: 'The market controller, i.e., *al-muḥtasib*, stops anyone who earns money through fortune telling and trickery, and punishes both giver and recipient, but God knows best'.

The prohibition of a dog's price and its description as foul and one of the worst earnings indicates that it is forbidden to sell this animal. It is not permissible to sell one and its price is not lawful to take. No fine is imposed on one who destroys it, whether it is trained or untrained and permissible to own or not. This is the view of the great majority of scholars, including Abu Hurayrah, al-Ḥasan al-Baṣrī, Rabīʿah; al-Awzāʿī, al-Ḥakam, Ḥammād; al-Shāfiʿī, Ahmad, Dāwūd, Ibn al-Mundhir and many others. Abu Ḥanīfah said that it is lawful to sell dogs that are of benefit, and the price is payable by anyone who destroys such a dog. Ibn al-Mundhir reports that Jābir, ʿAṭā' and al-Nakhaʿī said that it is permissible to sell a hunting dog, but not any other. Reports attributed to Mālik suggest different things, but one of them suggests that it is not permissible to sell a hunting dog, but a person who destroys such a dog incurs a fine equal to its value. Another report says that it is permissible to sell and the price must be paid. A third report says that selling a hunting dog is invalid and the one who destroys it does not incur a fine.

The evidence in support of the view of the majority of scholars can be found in the hadiths in this chapter. There are other hadiths, one of which prohibits taking a price for a dog 'except a hunting dog', and in another 'except a fierce dog'. Another hadith mentions that ʿUthmān, the third Caliph, imposed an indemnity of twenty camels on a man who killed a dog. Yet another hadith narrated by ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ says that

killing a dog imposes an indemnity. Yet all these hadiths are lacking in authenticity according to the agreed opinion of leading Hadith scholars. I explain these in my book, *Sharḥ al-Muhadhdhab*, in the chapter devoted to what is permissible to sell.

The above hadiths mention the earnings of a person who administers cupping, describing it as foul and one of the worst earnings. They thus provide evidence in support of those scholars of the opinion that cupping is forbidden. Scholars hold different views on the wages for cupping. The majority of early and later scholars say that such earnings are not unlawful, and it is not forbidden for anyone, whether free man or slave, to use it. This view is the one best known of the Ḥanbalī School. Another report attributed to Imam Ahmad says that such wages are forbidden to a free man, but not to a slave. This view is endorsed by scholars who combine Hadith and Fiqh scholarship. They cite these hadiths and similar ones as their evidence. The majority of scholars share the view that it is permissible to earn for cupping. This view is based on a hadith narrated by Ibn ʿAbbās stating that the Prophet had cupping administered to himself and that he gave the man who did the cupping his fee. This hadith is related by al-Bukhari and Muslim. Scholars say that had such earnings been forbidden, the Prophet would not have given the man anything. They understand the hadiths speaking against such earnings as discouragement, and directing people to disdain bad earnings, urging them to stick to good values and noble efforts. Had earnings for cupping been forbidden, it would be equally forbidden for a free man and a slave. For, it is not permissible for a person to feed his slave with what is unlawful.

Hadith No. 3517 censures taking money as a price for a cat. The censure is understood to indicate that a cat is of no benefit, or that it is mere discouragement, so that people get used to lending a cat or giving it away freely, as is mostly done. If a cat is useful and sold, the sale is legitimate and the price is lawful to take. This is the view of our Shāfiʿī School and all scholars, except for the view Ibn al-Mundhir attributes to Abu Hurayrah,

Ṭāwūs, Mujāhid and Jābir bin Zayd who said that a cat is not permissible to sell, citing this hadith in evidence. Scholars respond saying that the hadith is understood as we mentioned.

Transmission

Al-Khaṭṭābī and Abu ʿUmar ibn ʿAbd al-Barr said that the hadith censuring the sale of a cat, hadith No. 3517, is lacking in authenticity. This is incorrect, as the hadith is related by Muslim and others. Ibn ʿAbd al-Barr also said that only Ḥammād ibn Salamah narrated it from Abu al-Zubayr. This is again wrong, because we see that Muslim relates the hadith in his *Ṣaḥīḥ*, as narrated also by Maʿqil ibn ʿUbaydullāh from Abu al-Zubayr. We see that two reliable narrators report the hadith from Abu al-Zubayr, who is also reliable, but God knows best.

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i. Related by al-Bukhari, 2237, 2282, 3946, and 5761; Abu Dāwūd, 3428 and 3481; al-Tirmidhī, 1133 and 1276; al-Nasā'ī, 4303; Ibn Mājah, 2159.

ii. Related by Abu Dāwūd in a similar version, 3421; al-Tirmidhī in a similar version, 1275; al-Nasā'ī, 4305.

CHAPTER 10

REGARDING WHICH DOGS MAY BE OWNED

[3518–43]. (Dar al-Salam 3809) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger (peace be upon him) ordered the killing of dogs’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَمَرَ بِقَتْلِ الْكِلاَبِ.

[3519–44]. (Dar al-Salam 3810) Abu Bakr ibn Abi Shaybah narrated: Abu Usāmah narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar. He said: **‘God’s Messenger (peace be upon him) ordered the killing of dogs. He sent out bearers of his order to kill them to all districts of Madinah’.**

دَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَبُو أُسَامَةَ، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: أَمَرَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِقَتْلِ الْكِلاَبِ، فَأَرْسَلَ فِي أَقْطَارِ الْـمَدِينَةِ أَنْ تُقْتَلَ.

[3520–45]. (Dar al-Salam 3811) Ḥumayd ibn Masʿadah narrated to me: Bishr (meaning Ibn al-Mufaḍḍal) narrated; Ismāʿīl (who is Ibn Umayyah) narrated; from Nāfiʿ; from ʿAbdullāh. He said: **‘God’s Messenger (peace be upon him) ordered the killing of dogs. We**

would go around in Madinah and its outskirts and kill every dog we saw. We would even kill a dog belonging to, and following a young Bedouin woman'.

وَحَدَّثَنِي حُمَيْدُ بْنُ مَسْعَدَةَ، حَدَّثَنَا بِشْرٌ (يَعْنِي ابْنَ الْـمُفَضَّلِ) حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ أُمَيَّةَ)، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ قَالَ: كَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَأْمُرُ بِقَتْلِ الْكِلاَبِ، فَنَنْبَعِثُ فِي الْـمَدِينَةِ وَأَطْرَافِهَا، فَلاَ نَدَعُ كَلْبًا إِلاَّ قَتَلْنَاهُ. حَتَّى إِنَّا لَنَقْتُلُ كَلْبَ الْـمُرَيَّةِ مِنْ أَهْلِ الْبَادِيَةِ يَتْبَعُهَا.

[3521–46]. (Dar al-Salam 3812) Yaḥyā ibn Yaḥyā narrated:[ii] Ḥammād ibn Zayd reported; from ʿAmr ibn Dīnār; from Ibn ʿUmar; that **'God's Messenger (peace be upon him) ordered the killing of dogs, except a hunting dog, sheep dog, or cattle dog'.**

It was said to Ibn ʿUmar that Abu Hurayrah says: **'or farm dog'.** Ibn ʿUmar said: **'Abu Hurayrah has a farm'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَمَرَ بِقَتْلِ الْكِلاَبِ، إِلاَّ كَلْبَ صَيْدٍ، أَوْ كَلْبَ غَنَمٍ، أَوْ مَاشِيَةٍ. فَقِيلَ لِابْنِ عُمَرَ إِنَّ أَبَا هُرَيْرَةَ يَقُولُ: أَوْ كَلْبَ زَرْعٍ. فَقَالَ ابْنُ عُمَرَ: إِنَّ لأَبِي هُرَيْرَةَ زَرْعًا.

[3522–47]. (Dar al-Salam 3813) Muhammad ibn Ahmad ibn Abi Khalaf narrated:[iii] Rawḥ narrated [H]. Also, Isḥāq ibn Manṣūr narrated to me; Rawḥ ibn ʿUbādah reported; Ibn Jurayj narrated; Abu al-Zubayr reported to me; that he heard Jābir ibn ʿAbdullāh say: **'God's Messenger (peace be upon him) ordered us to kill dogs. Even if a bedouin woman brought along a dog, we would kill it. Then the Prophet prohibited killing them. He said: "Kill**

only the one who is pitch black with two white spots; for he is a devil”.’

حَدَّثَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ أَبِي خَلَفٍ، حَدَّثَنَا رَوْحٌ، ح. وَحَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: أَمَرَنَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِقَتْلِ الْكِلاَبِ. حَتَّى إِنَّ الْـمَرْأَةَ تَقْدَمُ مِنَ الْبَادِيَةِ بِكَلْبِهَا، فَنَقْتُلُهُ. ثُمَّ نَهَى النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ قَتْلِهَا. وَقَالَ: «عَلَيْكُمْ بِالأَسْوَدِ الْبَهِيمِ ذِي النُّقْطَتَيْنِ فَإِنَّهُ شَيْطَانٌ».

[3523–48]. (Dar al-Salam 3814) ʿUbaydullāh ibn Muʿādh narrated: my father narrated; Shuʿbah narrated; from Abu al-Tayyāḥ; he heard Muṭarrif ibn ʿAbdullāh; from Ibn al-Mughaffal. He said: **‘God’s Messenger (peace be upon him) ordered the killing of dogs. He subsequently said: “What have they got against dogs?” He gave a concession regarding hunting and sheep dogs’.**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ، عَنْ أَبِي التَّيَّاحِ، سَمِعَ مُطَرِّفَ بْنَ عَبْدِ اللهِ، عَنِ ابْنِ الْـمُغَفَّلِ قَالَ: أَمَرَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِقَتْلِ الْكِلاَبِ. ثُمَّ قَالَ: «مَا بَالُهُمْ وَبَالُ الْكِلاَبِ»؟ ثُمَّ رَخَّصَ فِي كَلْبِ الصَّيْدِ وَكَلْبِ الْغَنَمِ.

[3524–49].[iv] Yaḥyā ibn Ḥabīb narrated: Khālid (meaning Ibn al-Ḥārith) narrated [H]. Also, Muhammad ibn Ḥātim narrated to me; Yaḥyā ibn Saʿīd narrated [H]. And, Muhammad ibn al-Walīd narrated to me; Muhammad ibn Jaʿfar [H]. Further, Isḥāq ibn Ibrāhīm; al-Naḍr reported [H]. Also, Muhammad ibn al-Muthannā

narrated; Wahb ibn Jarīr narrated; all of them from Shuʿbah; with the same chain of transmission: **the same text.**

Ibn Ḥātim said in his narration from Yaḥyā: **‘But he gave a concession regarding sheep, hunting and farm dogs’.**

وَحَدَّثَنِيهِ يَحْيَى بْنُ حَبِيبٍ، حَدَّثَنَا خَالِدٌ (يَعْنِي ابْنَ الْحَارِثِ)، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ الْوَلِيدِ، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا النَّضْرُ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ، كُلُّهُمْ عَنْ شُعْبَةَ، بِهَذَا الإِسْنَادِ.

وَقَالَ ابْنُ حَاتِمٍ فِي حَدِيثِهِ عَنْ يَحْيَى: وَرَخَّصَ فِي كَلْبِ الْغَنَمِ وَالصَّيْدِ وَالزَّرْعِ.

[3525–50]. (Dar al-Salam 3815) Yaḥyā ibn Yaḥyā narrated:[v] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar. He said: **‘God’s Messenger (peace be upon him) said: “Whoever owns a dog, other than a cattle or hunting dog, his good works are decreased by two portions every day”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ اقْتَنَى كَلْبًا، إِلاَّ كَلْبَ مَاشِيَةٍ أَوْ ضَارِي، نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطَانِ».

[3526–51]. (Dar al-Salam 3816) Abu Bakr ibn Abi Shaybah, Zuhayr ibn Ḥarb and Ibn Numayr narrated:[vi] they said: Sufyān narrated; from al-Zuhrī; from Sālim; from his father; from the Prophet (peace be upon him). He said: **‘Whoever owns a dog,**

other than a hunting or cattle dog, his reward is decreased by two portions every day'.

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، وَابْنُ نُمَيْرٍ قَالُوا: حَدَّثَنَا سُفْيَانُ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اقْتَنَى كَلْبًا، إِلاَّ كَلْبَ صَيْدٍ أَوْ مَاشِيَةٍ، نَقَصَ مِنْ أَجْرِهِ كُلَّ يَوْمٍ قِيرَاطَانِ».

[3527–52]. (Dar al-Salam 3817) Yaḥyā ibn Yaḥyā, Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated: Ismāʿīl (who is Ibn Jaʿfar) (Yaḥyā ibn Yaḥyā said: 'reported' and the others said: 'narrated'); from ʿAbdullāh ibn Dīnār; that he heard Ibn ʿUmar say: **'God's Messenger (peace be upon him) said: "Whoever owns a dog, other than a hunting or cattle dog, his good works are decreased by two portions every day".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَيَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ. (قَالَ يَحْيَى بْنُ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ اقْتَنَى كَلْبًا، إِلاَّ كَلْبَ ضَارِيَةٍ أَوْ مَاشِيَةٍ، نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطَانِ».

[3528–53]. (Dar al-Salam 3818) Yaḥyā ibn Yaḥyā, Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated:[vii] Ismāʿīl (Yaḥyā ibn Yaḥyā said: 'reported' and the others said: 'narrated'); from Muhammad (who is Ibn Abi Ḥarmalah); from Sālim ibn ʿAbdullāh; from his father; that **'God's Messenger (peace be upon him) said: "Whoever owns a dog, other than a cattle or hunting dog, his good works are decreased by one portion every day".'**

ʿAbdullāh said: and Abu Hurayrah said: **‘or a farm dog’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَيَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ. (قَالَ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) إِسْمَاعِيلُ، عَنْ مُحَمَّدٍ (وَهُوَ ابْنُ أَبِي حَرْمَلَةَ) عَنْ سَالِمِ بْنِ عَبْدِ اللهِ، عَنْ أَبِيهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اقْتَنَى كَلْبًا، إِلاَّ كَلْبَ مَاشِيَةٍ أَوْ كَلْبَ صَيْدٍ، نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطٌ». قَالَ عَبْدُ اللهِ: وَقَالَ أَبُو هُرَيْرَةَ: «أَوْ كَلْبَ حَرْثٍ».

[3529–54]. (Dar al-Salam 3819) Isḥāq ibn Ibrāhīm narrated:[viii] Wakīʿ reported; Ḥanẓalah ibn Abi Sufyān narrated; from Sālim; from his father; from God’s Messenger (peace be upon him). He said: **“Whoever owns a dog, other than a hunting or cattle dog, his good works are decreased by two portions every day”.’**

Sālim said**: ‘Abu Hurayrah used to say: “or a farm dog”. He had a farm.’**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا وَكِيعٌ، حَدَّثَنَا حَنْظَلَةُ بْنُ أَبِي سُفْيَانَ، عَنْ سَالِمٍ، عَنْ أَبِيهِ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اقْتَنَى كَلْبًا، إِلاَّ كَلْبَ ضَارٍ أَوْ مَاشِيَةٍ، نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطَانِ». قَالَ سَالِمٌ: وَكَانَ أَبُو هُرَيْرَةَ يَقُولُ: «أَوْ كَلْبَ حَرْثٍ». وَكَانَ صَاحِبَ حَرْثٍ.

[3530–55]. (Dar al-Salam 3820) Dāwūd ibn Rushayd narrated: Marwān ibn Muʿāwiyah narrated; ʿUmar ibn Ḥamzah ibn ʿAbdullāh ibn ʿUmar reported; Sālim ibn ʿAbdullāh narrated; from his father. He said: **‘God’s Messenger (peace be upon him) said: “If any family kept a dog, other than a cattle or hunting dog, their good works will be decreased by two portions every day”.’**

حَدَّثَنَا دَاوُدُ بْنُ رُشَيْدٍ، حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ، أَخْبَرَنَا عُمَرُ بْنُ حَمْزَةَ بْنِ عَبْدِ اللهِ بْنِ عُمَرَ، حَدَّثَنَا سَالِمُ بْنُ عَبْدِ اللهِ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَيُّمَا أَهْلِ دَارٍ اتَّخَذُوا كَلْبًا، إِلاَّ كَلْبَ مَاشِيَةٍ أَوْ كَلْبَ صَائِدٍ، نَقَصَ مِنْ عَمَلِهِمْ كُلَّ يَوْمٍ قِيرَاطَانِ».

[3531–56]. (Dar al-Salam 3821) Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn al-Muthannā's text): both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Qatādah; from Abu al-Ḥakam. He said: I heard Ibn ʿUmar narrating from the Prophet (peace be upon him) say: **'Any person who keeps a dog, other than a farm, sheep or hunting dog, will have his reward decreased by one portion every day'.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْـمُثَنَّى) قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنْ أَبِي الْحَكَمِ، قَالَ سَمِعْتُ ابْنَ عُمَرَ، يُحَدِّثُ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اتَّخَذَ كَلْبًا، إِلاَّ كَلْبَ زَرْعٍ أَوْ غَنَمٍ أَوْ صَيْدٍ، يَنْقُصُ مِنْ أَجْرِهِ كُلَّ يَوْمٍ قِيرَاطٌ.

[3532–57]. (Dar al-Salam 3822) Abu al-Ṭāhir and Ḥarmalah narrated to me:[ix] both said: Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; from Saʿīd ibn al-Musayyib; from Abu Hurayrah; from God's Messenger (peace be upon him). He said: **'Whoever owns a dog which is not a hunting, cattle or farm dog will have his reward decreased by two portions every day.'**

Abu al-Ṭāhir's narration does not include **'or farm'**.

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ، قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْـمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ

اقْتَنَى كَلْبًا، لَيْسَ بِكَلْبِ صَيْدٍ وَلاَ مَاشِيَةٍ وَلاَ أَرْضٍ، فَإِنَّهُ يَنْقُصُ مِنْ أَجْرِهِ قِيرَاطَانِ كُلَّ يَوْمٍ». وَلَيْسَ فِي حَدِيثِ أَبِي الطَّاهِرِ: «وَلاَ أَرْضٍ».

[3533–58]. (Dar al-Salam 3823) ʿAbd ibn Ḥumayd narrated:[x] ʿAbd al-Razzāq narrated; Maʿmar reported; from al-Zuhrī; from Abu Salamah; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “Whoever keeps a dog which is not a cattle, hunting or farm dog will have his reward decreased by one portion every day”.’**

Al-Zuhrī said: Ibn ʿUmar was told what Abu Hurayrah narrated, and he said: **‘May God bestow mercy on Abu Hurayrah. He had a farm’.**

حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ اتَّخَذَ كَلْبًا، إِلاَّ كَلْبَ مَاشِيَةٍ أَوْ صَيْدٍ أَوْ زَرْعٍ، انْتَقَصَ مِنْ أَجْرِهِ كُلَّ يَوْمٍ قِيرَاطٌ».

قَالَ الزُّهْرِيُّ فَذُكِرَ لِابْنِ عُمَرَ قَوْلُ أَبِي هُرَيْرَةَ فَقَالَ: يَرْحَمُ اللهُ أَبَا هُرَيْرَةَ، كَانَ صَاحِبَ زَرْعٍ.

[3534–59]. (Dar al-Salam 3824–3826) Zuhayr ibn Ḥarb narrated to me:[xi] Ismāʿīl ibn Ibrāhīm narrated; Hishām al-Dastawā’ī narrated; Yaḥyā ibn Abi Kathīr narrated; from Abu Salamah; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “Whoever keeps a dog will have his good works decreased by one portion every day, except for a farm or cattle dog”.’**

حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا هِشَامٌ الدَّسْتَوَائِيُّ، حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَمْسَكَ كَلْبًا فَإِنَّهُ يَنْقُصُ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطٌ، إِلاَّ كَلْبَ حَرْثٍ أَوْ مَاشِيَةٍ».

Isḥāq ibn Ibrāhīm narrated:[xii] Shuʿayb ibn Isḥāq reported; al-Awzāʿī narrated; Yaḥyā ibn Abi Kathīr narrated to me; Abu Salamah ibn ʿAbd al-Raḥmān narrated to me; Abu Hurayrah narrated to me; from God's Messenger (peace be upon him): **the same text.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا شُعَيْبُ بْنُ إِسْحَاقَ، حَدَّثَنَا الأَوْزَاعِيُّ، حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ، حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، حَدَّثَنِي أَبُو هُرَيْرَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ.

Ahmad ibn al-Mundhir narrated: ʿAbd al-Ṣamad narrated; Ḥarb narrated; Yaḥyā ibn Abi Kathīr narrated; with the same chain of transmission: **the same text.**

حَدَّثَنَا أَحْمَدُ بْنُ الْمُنْذِرِ، حَدَّثَنَا عَبْدُ الصَّمَدِ، حَدَّثَنَا حَرْبٌ، حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3535–60]. (Dar al-Salam 3827) Qutaybah ibn Saʿīd narrated: ʿAbd al-Wāḥid (meaning Ibn Ziyād) narrated; from Ismāʿīl ibn Sumayʿ; Abu Ruzayn narrated; he said: I heard Abu Hurayrah say**: 'God's Messenger (peace be upon him) said: "Whoever keeps a dog which is not a hunting or sheep dog will have his good works decreased by one portion every day".'**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا عَبْدُ الْوَاحِدِ (يَعْنِي ابْنَ زِيَادٍ)، عَنْ إِسْمَاعِيلَ بْنِ سُمَيْعٍ، حَدَّثَنَا أَبُو رَزِينٍ، قَالَ سَمِعْتُ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ اتَّخَذَ كَلْبًا، لَيْسَ بِكَلْبِ صَيْدٍ وَلاَ غَنَمٍ، نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطٌ».

[3536–61]. (Dar al-Salam 3828–3829) Yaḥyā ibn Yaḥyā narrated:[xiii] he said: I read out to Mālik; from Yazīd ibn Khuṣayfah; that al-Sā’ib ibn Yazīd reported to him; that he heard Sufyān ibn Abi Zuhayr (who is a man from Shanū’ah and a Companion of the Prophet) say: **‘Whoever keeps a dog which is not for farm or cattle will have his good works decreased by one portion every day’. He said: ‘Did you yourself hear this said by God’s Messenger (peace be upon him)?’ He said: ‘Yes, by the Lord of this mosque’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ يَزِيدَ بْنِ خُصَيْفَةَ، أَنَّ السَّائِبَ بْنَ يَزِيدَ أَخْبَرَهُ، أَنَّهُ سَمِعَ سُفْيَانَ بْنَ أَبِي زُهَيْرٍ، - وَهُوَ رَجُلٌ مِنْ شَنُوءَةَ مِنْ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ – قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنِ اقْتَنَى كَلْبًا لا يُغْنِي عَنْهُ زَرْعًا وَلاَ ضَرْعًا نَقَصَ مِنْ عَمَلِهِ كُلَّ يَوْمٍ قِيرَاطٌ». قَالَ: آنْتَ سَمِعْتَ هَذَا مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ قَالَ: إِي، وَرَبِّ هَذَا الْـمَسْجِدِ.

Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated: they said: Ismāʿīl narrated; from Yazīd ibn Khuṣayfah; al-Sā’ib ibn Yazīd reported to me; that Sufyān ibn Abi Zuhayr al-Shana’ī visited them. He said: God’s Messenger (peace be upon him) said: **the same text.**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ، عَنْ يَزِيدَ بْنِ خُصَيْفَةَ، أَخْبَرَنِي السَّائِبُ بْنُ يَزِيدَ، أَنَّهُ وَفَدَ عَلَيْهِمْ سُفْيَانُ بْنُ أَبِي زُهَيْرٍ الشَّنَئِيُّ فَقَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ.

Text Explanation

The hadiths in this chapter speak first about an order given by the Prophet to kill the dogs in Madinah, and this order was carried out in the city's various districts. The hadiths also make clear that it is not permissible to own or keep a dog, but a concession is made regarding certain dogs, particularly hunting sheep and farm dogs. Several hadiths speak of losing a portion or two of one's daily reward for one's good deeds as a result of keeping a dog.

It is the unanimous view of all scholars that dogs with symptoms of rabies and biting dogs must be killed. Scholars, however, differ concerning the killing of unharmful dogs. Imam al-Ḥaramayn, a Shāfiʿī scholar, said that the Prophet first ordered the killing of all dogs, then abrogated this order, prohibiting killing dogs except the totally black dog. The final ruling prohibits killing all unharmful dogs, including black dogs. The hadith narrated by Ibn al-Mughaffal, No. 3523, provides evidence in support of this view. *Qadi* ʿIyāḍ said:

> Many scholars uphold the view mentioned in the hadith concerning the killing of dogs, apart from the exception of hunting and similar dogs. This is the view of Mālik and his school. Scholars sharing this view differ on whether the concession concerning hunting dogs and similar ones constitute an abrogation of the original general ruling to kill the dogs, and whether the killing applied to all dogs, or applied to dogs other than those specified. Other scholars consider that it is

permissible to keep all dogs and that the order to kill dogs and the prohibition of owning them, apart from the black dog, are abrogated.

My own view is that the prohibition was originally general, applying to all dogs, and ordering killing all of them. Then the order to kill was rescinded in the case of all dogs apart from the black dogs. It is also prohibited to own and keep a dog other than a hunting, farm or cattle dog.

What *Qadi* ʿIyāḍ says is based on the apparent meaning of the hadiths in this chapter. This means that hadith No. 3523, narrated by Ibn al-Mughaffal applies to all dogs apart from the black dog, because its import is general. However, hadith No. 3522 which specifies the black dog limits its application.

As for owning and keeping dogs, our Shāfiʿī School maintains that it is forbidden to own a dog unless there is need, but it is permissible to own a hunting, farm or cattle dog. A question arises about a guard dog, to protect homes, streets, or other areas. Scholars express two views; the first is that it is not permissible on the basis of the apparent meaning of these hadiths, as they clearly state the prohibition apart from farm, cattle or hunting dogs. The second, and more correct view is that it is permissible on the basis of analogy with the three types mentioned in the concession. The analogy is based on the reason understood from these hadiths, which is the need for such dogs. A question is raised: is it permissible to own a puppy and train it to become a hunting, farm or cattle dog? Our scholars express two views, the more correct of which is that it is permissible.

Hadith No. 3521 mentions that Ibn ʿUmar said: ‘Abu Hurayrah has a farm’, and in hadith No. 3529 Sālim mentions that Abu Hurayrah used to say, ‘or a farm dog’, adding that he had a farm. Scholars say that this does not detract from Abu Hurayrah’s narration or raise any doubt about it. It simply means that because Abu Hurayrah had a farm, he took care of the relevant ruling, memorizing it. It is normal that one who is in need of a particular thing learns about it and goes into it in a way that others do not.

He will learn any relevant rulings applicable to it. Muslim mentions this addition of the permissibility of keeping a farm dog, as reported by Ibn al-Mughaffal, No. 3523, and in hadith No. 3536 narrated by Sufyān ibn Abi Zuhayr from the Prophet, and also in hadith No. 3531 narrated by Ibn al-Ḥakam named ʿAbd al-Raḥmān ibn Abi Nuʿm al-Bujalī from Ibn ʿUmar. This suggests the probability that when Ibn ʿUmar heard it from Abu Hurayrah and confirmed that the Prophet said it, he narrated it himself after that. He added it to the hadith he used to narrate without it earlier. It is also possible that he sometimes forgot and sometimes remembered that he heard it from the Prophet and this explains why he mentions it in some narrations and omits it in others. The sum of all this is that Abu Hurayrah is not the only one who narrates this addition. A number of the Prophet's Companions also narrate it from the Prophet. Yet, had Abu Hurayrah been the only one who narrates it, his narration would be perfectly acceptable and honoured.

Hadith No. 3522 mentions killing only black dogs: 'Kill only the one who is pitch-black with two white spots; for he is a devil'. This singles out a type of dog which is completely black except for two while spots over its two eyes. This type is seen often and well-known. The Prophet describes such a dog as 'a devil'. This is taken by Ahmad and some of our scholars as evidence that what is hunted by such a dog is not permissible to eat, because such a creature is a devil. It is a dog's hunting that is permissible, not a devil's. Al-Shāfiʿī, Mālik and the great majority of scholars said that hunting by a black dog is permissible in the same way as what is hunted by other dogs. The hadith does not seek to set the black one apart from other dogs, as if it was of a different category altogether. Hence, if a black dog eats or drinks from a plate or container, it must be washed in the same way as when it is used by a dog of any colour.

Hadith No. 3523 quotes the Prophet as saying: 'What have they got against dogs?' This means that people should leave dogs alone. He then gives the concession concerning hunting and sheep dogs. Other hadiths mention that owning or keeping a dog decreases a person's reward. Some

hadiths say it decreases one's good deeds, and others says it decreases one's reward. The meaning is that it decreases the reward of one's good deeds. Again, the decrease is mentioned in some hadiths as one portion every day and in others as two portions every day. As for 'portion', it refers to a particular quantity known to God. That the decrease of reward is given differently in different hadiths is explained in various ways. It is said that it may be in reference to two types of dog, one of which is more harmful than the other. It is variously said that the two portions apply to Madinah in particular because of its honoured status and the one portion applies to other places; or else, the two portions apply to cities and villages while the one portion applies to desert and open areas. Alternatively, it might have occurred in two different times, starting with one portion, then reasserting the punishment that mentions the two portions.

Al-Ruwayyānī, a Shāfiʿī scholar, mentions in his book *al-Baḥr* that scholars differ concerning what is meant of the reduction. Some say the decrease affects one's past good deeds, while others say it affects one's future deeds. They also give different suggestions about such deeds, with some suggesting that one portion applies to one's good deeds during the day and the other to one's deeds during the night. Or that one portion of the reward for obligatory worship and one portion of the reward for voluntary worship, but God knows best.

Scholars differ in their explanation of the decrease in reward as a result of keeping a dog. Some suggest the reason to be because angels do not enter the keeper's home due to the presence of a dog. Another suggestion puts the reason as scaring passers by. Yet another suggestion is that it is a punishment for the owner because of keeping what he is forbidden to own or keep. A further suggestion gives the reason that the dog may touch or use different things at home, and the owner might be unaware of this. He, therefore, does not wash them with water and dust to keep them cleansed.

Transmission

The second chain of transmission of hadith No. 3536 includes: ‘Sufyān ibn Abi Zuhayr al-Shana’ī visited them’. This is how the name occurs in most manuscripts. He belonged to the tribe of Azd Shanū’ah. In some copies, the name occurs as Shanawī, which is correct as a reduction of the glottal stop. Some narrators of al-Bukhari’s *Ṣaḥīḥ* give the name as Shunwī, which is also correct.

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i. Related by al-Bukhari, 3323; al-Nasā’ī in a longer version, 4288; Ibn Mājah, 3202.
ii. Related by al-Tirmidhī, 1488; al-Nasā’ī in a shorter version, 4290.
iii. Related by Abu Dāwūd, 2846.
iv. In Dar al-Salam’s edition, this hadith is attached to the previous one.
v. Related by al-Bukhari, 5482.
vi. Related by al-Nasā’ī, 4298.
vii. Related by al-Nasā’ī, 4302.
viii. Related by al-Bukhari, 5481; al-Nasā’ī, 4295.
ix. Related by al-Nasā’ī, 4301.
x. Related by Abu Dāwūd, 2844; al-Tirmidhī, 1490; al-Nasā’ī, 4300.
xi. Related by al-Bukhari, 2322.
xii. Related by Ibn Mājah, 3204.
xiii. Related by al-Bukhari, 2323 and 3325; al-Nasā’ī, 4296; Ibn Mājah, 3206.

CHAPTER 11

THE PERMISSIBILITY OF CUPPING FEES

[3537–62]. (Dar al-Salam 3830) Yaḥyā ibn Ayyūb, Qutaybah ibn Saʿīd and ʿAlī ibn Ḥujr narrated:[i] they said: Ismāʿīl (meaning Ibn Jaʿfar) narrated; from Ḥumayd. He said: Anas ibn Mālik was asked about the wages of the one who administers cupping. He said: **'God's Messenger (peace be upon him) had cupping; Abu Ṭaybah administered cupping to him. He ordered that he be given two *ṣāʿs* of food. He also spoke to his people and they reduced his charges. The Prophet said: "Cupping is the best of what you use of medication", or "Cupping is one of the best of your medicines".'**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَعَلِيُّ بْنُ حُجْرٍ، قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (يَعْنُونَ ابْنَ جَعْفَرٍ)، عَنْ حُمَيْدٍ قَالَ: سُئِلَ أَنَسُ بْنُ مَالِكٍ عَنْ كَسْبِ الْحَجَّامِ فَقَالَ: احْتَجَمَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. حَجَمَهُ أَبُو طَيْبَةَ، فَأَمَرَ لَهُ بِصَاعَيْنِ مِنْ طَعَامٍ. وَكَلَّمَ أَهْلَهُ فَوَضَعُوا عَنْهُ مِنْ خَرَاجِهِ. وَقَالَ: «إِنَّ أَفْضَلَ مَا تَدَاوَيْتُمْ بِهِ الْحِجَامَةُ أَوْ هُوَ مِنْ أَمْثَلِ دَوَائِكُمْ».

[3538–63]. (Dar al-Salam 3831) Ibn Abi ʿUmar narrated: Marwān (meaning al-Fazārī) narrated; from Ḥumayd. He said: **'Anas was asked about the wages of the one who administers cupping. He gave the same answer, but he also said: "The best of your**

medications are cupping and aloeswood. Do not hurt your young ones by pressing at their throats”.’

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا مَرْوَانُ (يَعْنِي الْفَزَارِيَّ)، عَنْ حُمَيْدٍ قَالَ: سُئِلَ أَنَسٌ عَنْ كَسْبِ الْحَجَّامِ، فَذَكَرَ بِمِثْلِهِ. غَيْرَ أَنَّهُ قَالَ: «إِنَّ أَفْضَلَ مَا تَدَاوَيْتُمْ بِهِ الْحِجَامَةُ، وَالْقُسْطُ الْبَحْرِيُّ، وَلاَ تُعَذِّبُوا صِبْيَانَكُمْ بِالْغَمْزِ».

[3539–64]. (Dar al-Salam 3832) Ahmad ibn al-Ḥasan ibn Khirāsh narrated:[ii] Shabābah narrated; Shuʿbah narrated; from Ḥumayd. He said: I heard Anas say: **‘The Prophet called a servant of ours who administered cupping, and he cupped him. He ordered that he be given a *ṣāʿ* of food or one or two *mudds*; and he spoke [to his people] and his charges were reduced’.**

حَدَّثَنَا أَحْمَدُ بْنُ الْحَسَنِ بْنِ خِرَاشٍ، حَدَّثَنَا شَبَابَةُ، حَدَّثَنَا شُعْبَةُ، عَنْ حُمَيْدٍ قَالَ: سَمِعْتُ أَنَسًا يَقُولُ: دَعَا النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ غُلاَمًا لَنَا حَجَّامًا فَحَجَمَهُ، فَأَمَرَ لَهُ بِصَاعٍ أَوْ مُدٍّ أَوْ مُدَّيْنِ. وَكَلَّمَ فِيهِ فَخُفِّفَ عَنْ ضَرِيبَتِهِ.

[3540–65]. (Dar al-Salam 3833) Abu Bakr ibn Abi Shaybah narrated:[iii] ʿAffān ibn Muslim narrated [H]. Also, Isḥāq ibn Ibrāhīm narrated; al-Makhzūmī reported; both from Wuhayb; Ibn Ṭāwūs narrated; from his father; from Ibn ʿAbbās; that **‘God’s Messenger had cupping administered to him and he gave the cupper his wages. He also used medication through his nostrils’.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَفَّانُ بْنُ مُسْلِمٍ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا الْمَخْزُومِيُّ، كِلاَهُمَا عَنْ وُهَيْبٍ، حَدَّثَنَا ابْنُ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ، أَنَّ رَسُولَ

اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ احْتَجَمَ، وَأَعْطَى الْحَجَّامَ أَجْرَهُ وَاسْتَعَطَ.

[3541–66]. (Dar al-Salam 3834) Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated (ʿAbd's text): both said: ʿAbd al-Razzāq reported; Maʿmar reported; from ʿĀṣim; from al-Shaʿbī; from Ibn ʿAbbās. He said: **'A slave belonging to the Bayāḍah clan administered cupping to the Prophet. The Prophet gave him his wages and spoke to his master reducing his charges. Had such payment been unlawful, the Prophet would not have so given him'.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَبْدُ بْنُ حُمَيْدٍ (وَاللَّفْظُ لِعَبْدٍ) قَالا: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنْ عَاصِمٍ، عَنِ الشَّعْبِيِّ، عَنِ ابْنِ عَبَّاسٍ قَالَ: حَجَمَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَبْدٌ لِبَنِي بَيَاضَةَ، فَأَعْطَاهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَجْرَهُ، وَكَلَّمَ سَيِّدَهُ فَخَفَّفَ عَنْهُ مِنْ ضَرِيبَتِهِ. وَلَوْ كَانَ سُحْتًا لَمْ يُعْطِهِ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

Text Explanation

This chapter includes hadiths which mention that the Prophet was treated with cupping and he gave the person who administered the cupping his fee or wages. Ibn ʿAbbās said that the Prophet would not have paid the cupper, had cupping been unlawful.

These hadiths make clear that cupping is perfectly permissible as a way of treatment, and that it is a useful method. The hadiths also illustrate that seeking medical treatment is permissible and that payment to a doctor is also permissible. Furthermore, the hadiths permit speaking to people who are owed certain duties or debts to forego a part of their claims in order to reduce the burden on those who owe them. The hadiths confirm that it is

permissible to make an arrangement between master and slave, with the agreement of both parties. The arrangement allows the slave to work and earn money, requiring him to pay an agreed amount to his master every day or every week, with any extra left to the slave as his own money.

In hadith No. 3538, the Prophet advised his Companions against pressing the throats of their children, when they complained of some throat infection, describing this as torture. He advised them to treat them with aloeswood.

Hadith No. 3537 mentions that the one who administered cupping to the Prophet was Abu Ṭaybah. Abu Ṭaybah was a slave belonging to the Bayāḍah clan and his name was Nāfiʿ, but other reports give him different names.

i. Related by al-Tirmidhī, 1278.

ii. Related by al-Bukhari, 2281.

iii. Related by al-Bukhari, 2278 and 5691; Ibn Mājah in a shorter version, 2162.

CHAPTER 12

THE PROHIBITION OF SELLING WINE

[3542–67]. (Dar al-Salam 3835) ʿUbaydullāh ibn ʿUmar al-Qawārīrī narrated: ʿAbd al-ʿAlā' ibn ʿAbd al-ʿAlā' Abu Hammām narrated; Saʿīd al-Jurayrī narrated; from Abu Naḍrah; from Abu Saʿīd al-Khudrī. He said: **'I heard God's Messenger (peace be upon him) giving a *khuṭbah* in Madinah. He said: "People, God, the Exalted, has given hints about wine, and it may be that He will reveal some order concerning it. Whoever has some of it should sell it and benefit thereby". It was not long after when the Prophet said: "God has forbidden wine. Whoever has learnt this verse and has some of it must neither drink nor sell it". People came out with whatever they had of it and spilled it on the roads of Madinah.'**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، حَدَّثَنَا عَبْدُ الأَعْلَى بْنُ عَبْدِ الأَعْلَى أَبُو هَمَّامٍ، حَدَّثَنَا سَعِيدٌ الْجُرَيْرِيُّ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَخْطُبُ بِالْمَدِينَةِ قَالَ: «يَا أَيُّهَا النَّاسُ، إِنَّ اللهَ تَعَالَى يُعَرِّضُ بِالْخَمْرِ. وَلَعَلَّ اللهَ سَيُنْزِلُ فِيهَا أَمْرًا، فَمَنْ كَانَ عِنْدَهُ مِنْهَا شَيْءٌ فَلْيَبِعْهُ وَلْيَنْتَفِعْ بِهِ». قَالَ: فَمَا لَبِثْنَا إِلاَّ يَسِيرًا حَتَّى قَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ اللهَ تَعَالَى حَرَّمَ الْخَمْرَ. فَمَنْ أَدْرَكَتْهُ هَذِهِ الآيَةُ وَعِنْدَهُ مِنْهَا شَيْءٌ، فَلاَ يَشْرَبْ، وَلاَ يَبِعْ». قَالَ فَاسْتَقْبَلَ النَّاسُ بِمَا كَانَ عِنْدَهُ مِنْهَا فِي طَرِيقِ الْمَدِينَةِ، فَسَفَكُوهَا.

[3543–68]. (Dar al-Salam 3836–5837) Suwayd ibn Saʿīd narrated:[i] Ḥafṣ ibn Maysarah narrated; from Zayd ibn Aslam; from ʿAbd al-Raḥmān ibn Waʿlah (a man from Egypt) that he visited ʿAbdullāh ibn ʿAbbās [H]. Also, Abu al-Ṭāhir narrated (his text); Ibn Wahb reported; Mālik ibn Anas and others reported to me; from Zayd ibn Aslam; from ʿAbd al-Raḥmān ibn Waʿlah al-Saba'ī (from Egypt); that he asked ʿAbdullāh ibn ʿAbbās about grapes made in juice. Ibn ʿAbbās said: **'A man gave a leather bottle of wine to God's Messenger as a gift. God's Messenger (peace be upon him) said to him: "Do you know that God has forbidden it?" The man said: "No". He then spoke privately to someone. The Prophet said to that person: "What did you whisper to him?" The man said: "I told him to sell it". He said: "The One who has forbidden drinking it has also forbidden selling it". The man opened the bottle and poured out all its contents.'**

حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ، حَدَّثَنَا حَفْصُ بْنُ مَيْسَرَةَ، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ وَعْلَةَ (رَجُلٌ مِنْ أَهْلِ مِصْرَ)، أَنَّهُ جَاءَ عَبْدَ اللهِ بْنَ عَبَّاسٍ ح. وَحَدَّثَنَا أَبُو الطَّاهِرِ (وَاللَّفْظُ لَهُ)، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي مَالِكُ بْنُ أَنَسٍ وَغَيْرُهُ، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ وَعْلَةَ السَّبَئِيِّ (مِنْ أَهْلِ مِصْرَ)، أَنَّهُ سَأَلَ عَبْدَ اللهِ بْنَ عَبَّاسٍ عَمَّا يُعْصَرُ مِنَ الْعِنَبِ. فَقَالَ ابْنُ عَبَّاسٍ: إِنَّ رَجُلاً أَهْدَى لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَاوِيَةَ خَمْرٍ، فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «هَلْ عَلِمْتَ أَنَّ اللهَ قَدْ حَرَّمَهَا»؟ قَالَ: لا. فَسَارَّ إِنْسَانًا. فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «بِمَ سَارَرْتَهُ»؟ فَقَالَ: أَمَرْتُهُ بِبَيْعِهَا. فَقَالَ: «إِنَّ الَّذِي حَرَّمَ شُرْبَهَا حَرَّمَ بَيْعَهَا». قَالَ: فَفَتَحَ الْمَزَادَةَ، حَتَّى ذَهَبَ مَا فِيهَا.

Abu al-Ṭāhir narrated to me: Ibn Wahb reported; Sulaymān ibn Bilāl reported to me; from Yaḥyā ibn Saʿīd; from ʿAbd al-Raḥmān ibn Waʿlah; from ʿAbdullāh ibn ʿAbbās; from God's Messenger (peace be upon him): **the same text.**

حَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلاَلٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ وَعْلَةَ، عَنْ عَبْدِ اللهِ بْنِ عَبَّاسٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: مِثْلَهُ.

[3544–69]. (Dar al-Salam 3838) Zuhayr ibn Ḥarb and Isḥāq ibn Ibrāhīm narrated:[ii] Jarīr (Zuhayr said: 'narrated' and Isḥāq said: 'reported'); from Manṣūr; from Abu al-Ḍuḥā; from Masrūq; from ʿĀ'ishah. She said: **'When the verses at the end of Surah 2, The Cow, were revealed, God's Messenger (peace be upon him) went out and recited them to people. He then prohibited trading in wine'.**

حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ. (قَالَ زُهَيْرٌ حَدَّثَنَا وَقَالَ إِسْحَاقُ أَخْبَرَنَا) جَرِيرٌ، عَنْ مَنْصُورٍ، عَنْ أَبِي الضُّحَى، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ، قَالَتْ: لَمَّا نَزَلَتِ الآيَاتُ مِنْ آخِرِ سُورَةِ الْبَقَرَةِ خَرَجَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَاقْتَرَأَهُنَّ عَلَى النَّاسِ، ثُمَّ نَهَى عَنِ التِّجَارَةِ فِي الْخَمْرِ.

[3545–70]. (Dar al-Salam 3839) Abu Bakr ibn Abi Shaybah, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated (Abu Kurayb's text): Abu Muʿāwiyah (Isḥāq said: 'reported' and the other two said: 'narrated'); from al-Aʿmash; from Muslim; from Masrūq; from ʿĀ'ishah. She said: **'When the verses at the end of Surah 2, The Cow, concerning usury were revealed, God's Messenger (peace**

be upon him) went out to the mosque where he prohibited trading in wine'.

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لأَبِي كُرَيْبٍ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: لَمَّا أُنْزِلَتِ الآيَاتُ مِنْ آخِرِ سُورَةِ الْبَقَرَةِ فِي الرِّبَا، قَالَتْ: خَرَجَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِلَى الْـمَسْجِدِ، فَحَرَّمَ التِّجَارَةَ فِي الْخَمْرِ.

Text Explanation

Hadith No. 3541 mentions that the Prophet first said in a speech before Friday Prayer that God had given hints about wine, then a short time later, its prohibition was revealed. People spilled whatever they had of it on the roads of Madinah. The hadith is taken as evidence that prior to giving any legislation about a particular thing or stuff, no ruling of prohibition or any thing else applied to it. This question is subject to well-known differences of view among scholars of legal theory. The more correct of the relevant views is that no ruling or requirement applies before legislation, because God says: 'We would never inflict punishment on anyone until We have sent a Messenger'. (17: 15) The second view is that the original verdict is prohibition until legislation gives a different ruling. The third is that it is permissible and the fourth is that rulings are suspended. This difference of views applies to matters that are not essential; it does not apply to what is unavoidable, such as breathing. There is no argument that such essential matters are not forbidden, except according to those who permit what is impossible. The hadith encourages giving advice to people in matters relating to life or religion. The Prophet advised Muslims to get the benefit of whatever they had of wine, as long as it was permissible. The same hadith mentions the Prophet's command: 'Whoever has some of it must

neither drink nor sell it'. In the next hadith, No. 3543, the Prophet says: 'The One who has forbidden drinking it has also forbidden selling it'. This is clear instruction that selling wine is forbidden: it is unanimously agreed upon. The reason, according to al-Shāfiʿī and those sharing his view is that it is impure, or that it provides no permissible and desired benefit. Thus, whatever is impure and whatever has no desired benefit are given the same ruling. This applies, for example, to wild animals that cannot be trained to hunt, insects, a single grain of wheat, etc. Nothing of these is permissible to sell. A well-known hadith related in the *Sunan* anthologies quotes Ibn ʿAbbās who says that the Prophet said: 'When God forbids a community to eat something, He also forbids them its price'. This is understood to refer to what is normally intended to be eaten. It does not apply to what is sold for a different purpose, such as a slave, a mule or domestic donkey, etc. These are forbidden to eat, but they are permissible to sell.

Hadith No. 3542 also mentions that the Prophet said: 'Whoever has learnt this verse…'. The Prophet refers here to the Qur'anic verse that gives the final verdict on intoxicant drinks and gambling. It says: 'Believers, intoxicants, games of chance, idolatrous practices and divining arrows are abominations devised by Satan. Therefore, turn away from them so that you may be successful'. (5: 90)

The hadith continues: 'People came out with whatever they had of it and spilled it on the roads of Madinah'. This gives clear evidence that it is not permissible to make vinegar out of it, that intoxicants must not be held on to, but rather must be spilled without delay. Had it been permissible to make it into vinegar, the Prophet would have made this clear to his Companions and he would have not allowed them to waste it, in the same way he advised them to make whatever benefit of it before it was prohibited. Similarly, the Prophet told the family that had a dead sheep to make use of its hide after tanning it. Scholars who say that it is forbidden to make vinegar out of wine and that such a process does not remove its impurity include al-Shāfiʿī, Ahmad, al-Thawrī and Mālik in the more

authentic of two reports attributed to him. On the other hand, al-Awzāʿī, al-Layth, Abu Ḥanīfah and Mālik in the other report say that it is permissible. However, if wine becomes vinegar by itself, all scholars agree that it is no longer impure, but Suḥnūn, a Mālikī scholar, says that it remains impure.

In hadith No. 3543, the Prophet asks the man who brought him a gift of wine: 'Do you know that God has forbidden it?' The man answered in the negative. Perhaps the Prophet asked him so as to ascertain his understanding. Had he been aware of its prohibition, the Prophet would have informed him of the further prohibition of making a gift of it, carrying or holding it, and he would have rebuked him for doing any of these. When the man told him that he was unaware of it, the man was excused. It appears that this took place shortly after the prohibition was made, and before it became widely known. This shows that whoever commits a sin when unaware of its prohibition, incurs no sin and deserves no punishment.

In the same hadith, the Prophet asks the man what he said to another man when he whispered to him. The man told the Prophet that he advised him to sell the wine. The one who was given this advice was the same person who gave the gift, as is clear in a different narration of this case. He was a man from the Daws tribe. *Qadi* ʿIyāḍ said that some commentators mistook him for someone else. The hadith shows that it is permissible to ask someone about some private matters. If what is being asked must be withheld, the one who is asked should not reveal it. Otherwise, he should give the information.

The hadith concludes with the statement that 'the man opened the bottle and poured out all its contents'. This is evidence in support of the view of al-Shāfiʿī and the majority of scholars that wine bottles and containers need not be broken or torn. It is enough to pour out their contents and re-use them. Mālik is quoted to have expressed two views: one is the same as the majority of scholars and the other is that such containers are broken or torn. This view has no basis. The hadith narrated by Abu Ṭalḥah that the

Prophet's Companions broke the containers does not mention that the Prophet ordered them to do so. They did so as a matter of their own choice.

Hadith No. 3544 narrated by ʿĀ'ishah says: 'When the verses at the end of Surah 2, The Cow, were revealed, God's Messenger (peace be upon him) went out and recited them to people. He then prohibited trading in wine'. The verses in question are those dealing with usury, as explained in the next hadith. *Qadi* ʿIyāḍ and other scholars said that the prohibition of wine is in Surah 5, The Repast, which was revealed a considerable time before the revelation of the verses about usury, which are among the last revelations. It is possible, therefore, that this prohibition of trading in wine came later than the prohibition of drinking intoxicants. On the other hand, it is possible that the prohibition of trading was spoken about by the Prophet at the same time as drinking was prohibited. He then reiterated this after the revelation of the verses concerning usury so as to re-emphasise it and make it better known. It may also be true that some of those present on this occasion were unaware of the prohibition of trading in wine. But God knows best.

i. Related by al-Nasā'ī, 4678.

ii. Related by al-Bukhari, 459, 2084, 2226, 4540, 4542 and 4543; Abu Dāwūd, 3490 and 3491; al-Nasā'ī, 4679; Ibn Mājah, 3382.

CHAPTER 13

THE PROHIBITION OF SELLING WINE, CARRION, PORK AND IDOLS

[3546–71]. (Dar al-Salam 3840–3841) Qutaybah ibn Saʿīd narrated:[i] Layth narrated; from Yazīd ibn Abi Ḥabīb; from ʿAṭā’ ibn Abi Rabāḥ; from Jābir ibn ʿAbdullāh, that he **‘heard God’s Messenger (peace be upon him) say when in Makkah in the Year of Victory:[ii] “God and His Messenger have forbidden the sale of wine, carrion, pork and idols”. People said: “Messenger of God, the fat of carrion is used as a coating for boats, varnishing hide and people use it in their lanterns?” The Prophet said: “No. It is forbidden”. God’s Messenger then said: “May God curse the Jews. When God, Mighty and Exalted, forbade them the fat of carrion, they melted it and sold it, devouring its price”.’**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّهُ سَمِعَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ عَامَ الْفَتْحِ وَهُوَ بِمَكَّةَ: «إِنَّ اللهَ وَرَسُولَهُ حَرَّمَ بَيْعَ الْخَمْرِ، وَالْمَيْتَةِ، وَالْخِنْزِيرِ، وَالأَصْنَامِ». فَقِيلَ: يَا رَسُولَ اللهِ، أَرَأَيْتَ شُحُومَ الْمَيْتَةِ، فَإِنَّهُ يُطْلَى بِهَا السُّفُنُ، وَيُدْهَنُ بِهَا الْجُلُودُ، وَيَسْتَصْبِحُ بِهَا النَّاسُ. فَقَالَ: «لا هُوَ حَرَامٌ». ثُمَّ قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عِنْدَ ذَلِكَ: «قَاتَلَ اللهُ الْيَهُودَ. إِنَّ اللهَ عَزَّ وَجَلَّ لَمَّا حَرَّمَ عَلَيْهِمْ شُحُومَهَا أَجْمَلُوهُ، ثُمَّ بَاعُوهُ فَأَكَلُوا ثَمَنَهُ».

Abu Bakr ibn Abi Shaybah and Ibn Numayr narrated: both said: Abu Usāmah narrated; from ʿAbd al-Ḥamīd ibn Jaʿfar; from Yazīd ibn Abi Ḥabīb; from ʿAṭā', from Jābir. He said: I heard God's Messenger (peace be upon him) in the Year of Victory [H]. Also, Muhammad ibn al-Muthannā narrated; al-Ḍaḥḥāk (meaning Abu ʿĀṣim) narrated; from ʿAbd al-Ḥamīd; Yazīd ibn Abi Ḥabīb narrated to me. He said: **'ʿAṭā' wrote to me that he heard Jābir ibn ʿAbdullāh say: "I heard God's Messenger say in the Year of Victory…"' the same text as al-Layth's narration.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ نُمَيْرٍ قَالا: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَامَ الْفَتْحِ ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا الضَّحَّاكُ (يَعْنِي أَبَا عَاصِمٍ)، عَنْ عَبْدِ الْحَمِيدِ، حَدَّثَنِي يَزِيدُ بْنُ أَبِي حَبِيبٍ قَالَ: كَتَبَ إِلَيَّ عَطَاءٌ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَامَ الْفَتْحِ، بِمِثْلِ حَدِيثِ اللَّيْثِ.

[3547–72]. (Dar al-Salam 3842–3843) Abu Bakr ibn Abi Shaybah, Zuhayr ibn Ḥarb and Isḥāq ibn Ibrāhīm narrated (Abu Bakr's text):[iii] they said: Sufyān ibn ʿUyaynah narrated; from ʿAmr; from Ṭāwūs; from Ibn ʿAbbās. He said: **'ʿUmar was informed that Samurah sold wine. He said: "May God punish Samurah". Does he not know that God's Messenger (peace be upon him) said: "May God curse the Jews. Fat was forbidden them and they melted it and sold it".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لأَبِي بَكْرٍ) قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرٍو، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: بَلَغَ عُمَرَ أَنَّ

سَمُرَةَ بَاعَ خَمْرًا، فَقَالَ: قَاتَلَ اللهُ سَمُرَةَ! أَلَمْ يَعْلَمْ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَعَنَ اللهُ الْيَهُودَ. حُرِّمَتْ عَلَيْهِمُ الشُّحُومُ، فَجَمَلُوهَا فَبَاعُوهَا».

Umayyah ibn Bisṭām narrated: Yazīd ibn Zurayʿ narrated; Rawḥ (meaning Ibn al-Qāsim) narrated; from ʿAmr ibn Dīnār; with the same chain of transmission: **the same text.**

حَدَّثَنَا أُمَيَّةُ بْنُ بِسْطَامَ، حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، حَدَّثَنَا (رَوْحٌ يَعْنِي ابْنَ الْقَاسِمِ)، عَنْ عَمْرِو بْنِ دِينَارٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3548–73]. (Dar al-Salam 3844) Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated: Rawḥ ibn ʿUbādah reported; Ibn Jurayj narrated; Ibn Shihāb reported to me; from Saʿīd ibn al-Musayyib; that Abu Hurayrah narrated to him; from God's Messenger (peace be upon him). He said: **'May God curse the Jews. Fats were forbidden them and they sold them and devoured the price.'**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ، أَخْبَرَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي ابْنُ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّهُ حَدَّثَهُ عَنْ أَبِي هُرَيْرَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «قَاتَلَ اللهُ الْيَهُودَ حَرَّمَ اللهُ عَلَيْهِمُ الشُّحُومَ، فَبَاعُوهَا وَأَكَلُوا أَثْمَانَهَا».

[3549–74].[iv] Ḥarmalah ibn Yaḥyā narrated to me:[v] Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; from Saʿīd ibn al-Musayyib; from Abu Hurayrah. He said that God's Messenger (peace be upon him) said: **'May God confound the Jews. They were forbidden fat, but they sold it and devoured its price.'**

حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «قَاتَلَ اللهُ الْيَهُودَ، حُرِّمَ عَلَيْهِمُ الشَّحْمُ فَبَاعُوهُ وَأَكَلُوا ثَمَنَهُ».

Text Explanation

In the first hadith, No. 3546, the Prophet forbids selling wine, carrion and other things. When people asked him about certain uses of the fat of carrion, he said: 'No, it is forbidden'. This means that they must not sell these things the Prophet lists. The pronoun, 'it,' refers to selling them, not making use of them. This is the correct view according to al-Shāfiʿī and his disciples: it is permissible to make use of the fat of carrion in the coating of boats, or for lighting, and other uses apart from food or on the human body. The same view is shared by ʿAṭā' ibn Abi Rabāḥ and Muhammad ibn Jarīr al-Ṭabarī. The majority of scholars, on the other hand, say that it is not permissible to make use of any of this, on the basis of the general prohibition of making use of carrion, apart from what was specifically excepted, which is tanned hide.

A question is raised about oil and fat which have been contaminated with impurity: can these be used for lighting and similar uses which do not involve food and the human body? Is it permissible to make soap from such oil? Or to feed honey contaminated with impurity to bees? Or to use carrion as feed for dogs and domestic animals? Different views were expressed by early scholars. The correct view of our Shāfiʿī School is that all such uses are permissible. *Qadi* ʿIyāḍ reports this view from Mālik, many Companions of the Prophet, al-Shāfiʿī, al-Thawrī, Abu Ḥanīfah and his disciples and al-Layth ibn Saʿd. He adds that a similar view is reported from ʿAlī, Ibn ʿUmar, Abu Mūsā and al-Qāsim ibn Muhammad. *Qadi* ʿIyāḍ further says that Abu Ḥanīfah and his disciples, al-Layth and other scholars also say that it is permissible to sell oil contaminated with impurity, if the

seller makes such contamination clear to the buyer. On the other hand, ʿAbd al-Malik ibn al-Mājashūn, Ahmad ibn Ḥanbal and Ahmad ibn Ṣāliḥ said that it is not permissible to make any use of any of this in any way whatsoever, but God knows best.

On the general matter of forbidding selling dead animals, scholars said that it is forbidden to sell the dead body of an unbeliever, if killed by Muslims and the unbelievers ask to buy it or to pay compensation for it. A hadith mentions that the Muslims killed Nawfal ibn ʿAbdullāh al-Makhzūmī during the Encounter of the Moat, and the unbelievers offered the Prophet ten thousand dirhams for his body, but he refused to take it and gave them the body. Al-Tirmidhī relates a similar hadith. Our scholars say that the reason for the prohibition of selling carrion, wine and the flesh of swine has to do with their impurity. Therefore, the prohibition applies to all types of impurity. The reason for the prohibition of selling idols is that they provide no permissible benefit. If they are made out of stuff that is of use when those idols are broken into pieces, then selling the breakage is subject to well-known differences in the views among our scholars. Some say it is forbidden on the basis of the general statement of prohibition, and others say that it is permissible on the basis of the beneficial use made of the breakage. They understand the hadith as applying to such idols whose breakage is of no beneficial use, or that the prohibition means only discouragement of selling idols in particular.

As for dead animals, wine and the flesh of swine, all Muslims agree that they, everyone of them, are forbidden to sell, but God knows best. *Qadi* ʿIyāḍ said:

> The hadith states that what is not permissible to eat and make use of is also not permissible to sell and benefit by its price, as with the fats mentioned in the hadith. Some Jews and unbelievers raised an objection, citing the case of a son inheriting a slave woman with whom his father had sexual intercourse. She is forbidden sexually to

the son, but it is unanimously agreed that it is lawful for the son to sell her and use her price.

This objection is merely intended to confuse those who have no knowledge. What is forbidden to the son who inherits a slave woman from his father is sexual intercourse, but this is not forbidden to any different owner. The son may have any use of the inherited slave woman other than sexual intercourse. If he sells her, she is permissible to her new owner in all legitimate ways.

The matter is different in the case of fats. What they are intended for, which is food, was forbidden to all Jews. The same applies to the fats of animals that die naturally: they are forbidden to all people. Every use other than food is also forbidden, but God knows best.

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i. Related by al-Bukhari, 2236, 4633 and 4296; Abu Dāwūd, 3486 and 3487; al-Tirmidhī, 1297; al-Nasā'ī, 4267 and 4683; Ibn Mājah, 2167.

ii. The 'Year of Victory' refers to the taking over of Makkah by the Prophet and his Companions. There was only a small skirmish between some Makkan people and one of the Muslim columns.

iii. Related by al-Bukhari, 2223 and 3460; Ibn Mājah, 3383.

iv. This hadith is missing in Dar al-Salam's edition.

v. Related by al-Bukhari, 2224.

CHAPTER 14

USURY

[3550–75]. (Dar al-Salam 3845) Yaḥyā ibn Yaḥyā narrated:[i] I read out to Mālik; from Nāfiʿ; from Abu Saʿīd al-Khudrī; that **‘God’s Messenger (peace be upon him) said: “Do not sell gold for gold except like for like and do not increase some of it over others. Do not sell silver for silver except like for like, and do not increase some of it over others. Do not sell what is unavailable for what is in hand”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ، إِلاَّ مِثْلاً بِمِثْلٍ. وَلاَ تُشِفُّوا بَعْضَهَا عَلَى بَعْضٍ. وَلا تَبِيعُوا الْوَرِقَ بِالْوَرِقِ إِلاَّ مِثْلاً بِمِثْلٍ. وَلاَ تُشِفُّوا بَعْضَهَا عَلَى بَعْضٍ. وَلاَ تَبِيعُوا مِنْهَا غَائِبًا بِنَاجِزٍ».

[3551–76]. (Dar al-Salam 3846–3847) Qutaybah ibn Saʿīd narrated: Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated; al-Layth reported; from Nāfiʿ; that a man from Banī Layth said to Ibn ʿUmar that Abu Saʿīd al-Khudrī narrated this from God’s Messenger (peace be upon him). In Qutaybah’s narration: ʿAbdullāh and Nāfiʿ went with him; and in Ibn Rumḥ’s version: Nāfiʿ said**: ‘ʿAbdullāh went taking me and the Laythī man with him to Abu Saʿīd al-Khudrī. He [i.e., ʿAbdullāh ibn ʿUmar]**

said: “This man tells me that you report that God’s Messenger (peace be upon him) prohibited selling silver for silver unless it is like for like, and selling gold for gold unless it is like for like”. Abu Saʿīd pointed with his two fingers to his two eyes and two ears and said: “My two eyes saw and my two ears heard God’s Messenger (peace be upon him) say: ‘Do not sell gold for gold or silver for silver unless it is like for like, and do not increase some of it over others. Do not sell anything of it which is unavailable for what is ready; it must be exchanged: hand to hand’.”’

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ نَافِعٍ، أَنَّ ابْنَ عُمَرَ قَالَ لَهُ رَجُلٌ مِنْ بَنِي لَيْثٍ إِنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ يَأْثُرُ هَذَا عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فِي رِوَايَةِ قُتَيْبَةَ: فَذَهَبَ عَبْدُ اللهِ وَنَافِعٌ مَعَهُ. وَفِي حَدِيثِ ابْنِ رُمْحٍ قَالَ نَافِعٌ: فَذَهَبَ عَبْدُ اللهِ، وَأَنَا مَعَهُ وَاللَّيْثِيُّ، حَتَّى دَخَلَ عَلَى أَبِي سَعِيدٍ الْخُدْرِيِّ فَقَالَ: إِنَّ هَذَا أَخْبَرَنِي أَنَّكَ تُخْبِرُ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الْوَرِقِ بِالْوَرِقِ إِلاَّ مِثْلاً بِمِثْلٍ، وَعَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ إِلاَّ مِثْلاً بِمِثْلٍ. فَأَشَارَ أَبُو سَعِيدٍ بِإِصْبَعَيْهِ إِلَى عَيْنَيْهِ وَأُذُنَيْهِ فَقَالَ: أَبْصَرَتْ عَيْنَايَ وَسَمِعَتْ أُذُنَايَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «لا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ، وَلاَ تَبِيعُوا الْوَرِقَ بِالْوَرِقِ، إِلاَّ مِثْلاً بِمِثْلٍ. وَلاَ تُشِفُّوا بَعْضَهُ عَلَى بَعْضٍ، وَلاَ تَبِيعُوا شَيْئًا غَائِبًا مِنْهُ بِنَاجِزٍ. إِلاَّ يَدًا بِيَدٍ».

Shaybān ibn Farrūkh narrated: Jarīr (meaning Ibn Ḥāzim) narrated [H]. Also, Muhammad ibn al-Muthannā narrated; ʿAbd al-Wahhāb narrated. He said: I heard Yaḥyā ibn Saʿīd [H]. And, Muhammad ibn al-Muthannā narrated; Ibn Abi ʿAdiy narrated; from Ibn ʿAwn; all of them from Nāfiʿ: **a similar text to the hadith narrated by**

al-Layth, from Nāfiʿ, from Abu Saʿīd al-Khudrī, from the Prophet.

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا جَرِيرٌ (يَعْنِي ابْنَ حَازِمٍ)، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا عَبْدُ الْوَهَّابِ قَالَ: سَمِعْتُ يَحْيَى بْنَ سَعِيدٍ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنِ ابْنِ عَوْنٍ، كُلُّهُمْ عَنْ نَافِعٍ: بِنَحْوِ حَدِيثِ اللَّيْثِ عَنْ نَافِعٍ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3552–77]. (Dar al-Salam 3848) Qutaybah ibn Saʿīd narrated: Yaʿqūb (meaning Ibn ʿAbd al-Raḥmān al-Qāriy) narrated; from Suhayl; from his father; from Abu Saʿīd al-Khudrī; that **‘God’s Messenger said: “Do not sell gold for gold or silver for silver, unless it is weight for weight, like for like, same for same”.’**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا يَعْقُوبُ (يَعْنِي ابْنَ عَبْدِ الرَّحْمَنِ الْقَارِيَّ)، عَنْ سُهَيْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ، وَلاَ الْوَرِقَ بِالْوَرِقِ، إِلاَّ وَزْنًا بِوَزْنٍ، مِثْلاً بِمِثْلٍ، سَوَاءً بِسَوَاءٍ».

[3553–78]. (Dar al-Salam 3849) Abu al-Ṭāhir, Ḥārūn ibn Saʿīd al-Aylī and Ahmad ibn ʿĪsā narrated: they said: Ibn Wahb narrated; Makhramah reported to me; from his father. He said: I heard Sulaymān ibn Yasār say that he heard Mālik ibn Abi ʿĀmir narrating from ʿUthmān ibn ʿAffān; that **‘God’s Messenger (peace be upon him) said: “Do not sell one dīnār for two dīnārs, or one dirham for two dirhams”.’**

حَدَّثَنَا أَبُو الطَّاهِرِ، وَهَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، وَأَحْمَدُ بْنُ عِيسَى قَالُوا: حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي مَخْرَمَةُ، عَنْ أَبِيهِ، قَالَ: سَمِعْتُ سُلَيْمَانَ بْنَ يَسَارٍ يَقُولُ: إِنَّهُ سَمِعَ مَالِكَ بْنَ أَبِي عَامِرٍ يُحَدِّثُ عَنْ عُثْمَانَ بْنِ عَفَّانَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا تَبِيعُوا الدِّينَارَ بِالدِّينَارَيْنِ، وَلاَ الدِّرْهَمَ بِالدِّرْهَمَيْنِ».

Text Explanation

The word *ribā* is the Arabic equivalent of ‘usury’. Its basic, linguistic meaning is ‘increase’. If it refers to something, it means it has increased, and if the derived verb refers to a person, it means that he has made a usurious transaction. It is unanimously agreed by all Muslims that *ribā*, or usury, is forbidden in Islam, but they differ on its limits and details. God says in the Qur’an: ‘God has made trade lawful and usury forbidden’. (2: 275) Hadiths speaking about usury are numerous and well-known.

In these hadiths, the Prophet specifies the prohibition of usury in six items: gold, silver, wheat, barley, dates and salt. The Ẓāhirī scholars say that usury applies only to these six items, because they reject analogy as a basis for legislation. All other scholars maintain that it is not limited to these six items but applies to other items which carry the same reason leading to prohibition. Again, scholars differ as to the reason for the prohibition of these items.

Al-Shāfiʿī said that the reason for the prohibition in the case of gold and silver[ii] is that they determine value and price. Therefore, the prohibition is not extended to any other item measured in weight or any other way, because nothing else has the same reason. He adds that the reason for the prohibition in the case of the other four items is that they are edible. Therefore, the prohibition is extended to all edible items.

Mālik agrees with al-Shāfiʿī concerning gold and silver, but says that the reason for the prohibition in the other four items is that they are food

which keeps and can be stored. He, therefore, extends the prohibition to raisins, because they keep like dates, and grains because they are similar to wheat and barley.

Abu Ḥanīfah says that the reason for the prohibition in the case of gold and silver is weight, and in the other four it is volume. Therefore, the prohibition is extended to whatever is measured by weight, such as copper, iron, etc. and whatever is measured by volume.

Saʿīd ibn al-Musayyib, Ahmad and al-Shāfiʿī in his old view[iii] said that the reason for the prohibition in the last four of the six items was because they are foods measured by weight or volume. There is, thus, a dual reason: food and weight, or food and volume. Therefore, the prohibition was not extended to what is not measured by weight or volume although it could be eaten, such as watermelon, quince and the like.[iv]

All scholars agree that it is permissible to sell any item to which usury applies against another 'usurious' item if they do not have the same reason for prohibition, and are in different quantities and handed over at different times. Thus, it is permissible to sell gold for wheat, or silver for barley or any other item measured by volume. Scholars are unanimous that it is not permissible to sell a 'usurious' item by the same quantity of the same item with one of the two quantities deferred. It is also forbidden to exchange two different quantities of the same items, such as gold for gold, on the spot. Further, it is not permissible for the seller and buyer to part before the exchange is made, if the exchange is two quantities of the same item, or of different items sharing the same reason for prohibition, such as gold for silver, or wheat for barley. Two different quantities of different items may be exchanged, such as two kilos of barley for one kilo of wheat, if the exchange is done on the spot. There is no difference among scholars on any of these matters except what we will mention later concerning Ibn ʿAbbās's view that usury applies only to deferment.

In hadith No. 3550, the Prophet says: 'Do not sell gold for gold or silver for silver except like for like'. Scholars say that this applies to all kinds of

gold and silver, whether high or low quality, broken or unbroken, jewellery or raw, etc. and whether pure or mixed. All this is unanimously agreed upon. The Prophet also says in the same hadith: 'Do not sell what is unavailable for what is in hand'. 'What is in hand' refers to what is present at the time of the transaction, and what is unavailable is deferred. Scholars unanimously agree that it is forbidden to sell gold for gold, or silver for silver if the exchange is delayed. The same applies to selling wheat for wheat or barley, and to every two items that have the same reason for the prohibition of usury.

If the sale transaction is one dīnār for one dīnār, with both being owed, then each party presents a dīnār or sends someone to collect a dīnār for him from home and they make the exchange when they are still together, before parting, then the transaction is valid. There is no disagreement among our scholars that it is lawful, because the condition is that they must not part before the exchange is made, and it is fulfilled. In the following hadith, No. 3551, the Prophet says: 'Do not sell anything of it which is unavailable for what is ready; it must be exchanged: hand to hand'.

Qadi ʿIyāḍ said that scholars are in agreement that it is not permissible to sell one of them against another if it is deferred or if one party leaves the place. It is not so. Al-Shāfiʿī and his disciples as well as other scholars are in agreement that the cases I have mentioned are permissible, but God knows best.

In hadith, No. 3552 the Prophet prohibits sale of quantities of the same item 'unless it is weight for weight, like for like, same for same'. Such equality is expressed in this way for greater emphasis and clarity.

i. Related by al-Bukhari, 2177; al-Tirmidhī, 1241; al-Nasā'ī, 4584 and 4585.

ii. Gold and silver were the universal currency at the time. People used the dīnār which is the unit of the gold currency and the dirham as the silver unit. Normally ten dirhams were equal to one dīnār.

iii. We often come across the distinction between al-Shāfiʿī's 'old' and 'new' views. The old views are those he expressed whilst living in Iraq, and the new ones pertain to his last five years when he lived in Egypt.

iv. Needless to say, melon, quince and similar items are sold today by weight.

CHAPTER 15

MONETARY EXCHANGE AND SELLING GOLD FOR SILVER

[3554–79]. (Dar al-Salam 3850–3851) Qutaybah ibn Saʿīd narrated:[i] Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated; al-Layth reported; from Ibn Shihāb; from Mālik ibn Aws ibn al-Ḥadathān; that he said: **'I came over saying: "Who will exchange for dirhams?" Ṭalḥah ibn ʿUbaydullāh, who was with ʿUmar ibn al-Khaṭṭāb, said: "Show us your gold. Come back to us when our servant will have come so that we give you your silver". ʿUmar ibn al-Khaṭṭāb said: "By God, No. You shall give him his silver [now] or return his gold". God's Messenger (peace be upon him) said: "Silver for gold is usurious unless exchanged on the spot; wheat for wheat is usurious unless exchanged on the spot; barley for barley is usurious unless exchanged on the spot; and dates for dates is usurious unless exchanged on the spot".'**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنِ ابْنِ شِهَابٍ، عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ أَنَّهُ قَالَ: أَقْبَلْتُ أَقُولُ مَنْ يَصْطَرِفُ الدَّرَاهِمَ؟ فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللهِ، وَهُوَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ: أَرِنَا ذَهَبَكَ، ثُمَّ ائْتِنَا إِذَا جَاءَ خَادِمُنَا نُعْطِكَ وَرِقَكَ. فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: كَلاَّ وَاللهِ، لَتُعْطِيَنَّهُ وَرِقَهُ أَوْ لَتَرُدَّنَّ إِلَيْهِ ذَهَبَهُ. فَإِنَّ رَسُولَ

اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْوَرِقُ بِالذَّهَبِ رِبًا إِلاَّ هَاءَ وَهَاءَ، وَالْبُرُّ بِالْبُرِّ رِبًا إِلاَّ هَاءَ وَهَاءَ، وَالشَّعِيرُ بِالشَّعِيرِ رِبًا إِلاَّ هَاءَ وَهَاءَ، وَالتَّمْرُ بِالتَّمْرِ رِبًا إِلاَّ هَاءَ وَهَاءَ.

Abu Bakr ibn Abi Shaybah, Zuhayr ibn Ḥarb and Isḥāq ibn ʿUyaynah narrated; from al-Zuhrī; with the same chain of transmission: **the same text**.

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ، عَنِ ابْنِ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ.

[3555–80]. (Dar al-Salam 3852) ʿUbaydullāh ibn ʿUmar al-Qawārīrī narrated:[ii] Ḥammād ibn Zayd narrated; from Ayyūb; from Abu Qilābah. He said: **‘I was in Syria attending a circle with Muslim ibn Yasār. Abu al-Ashʿath came over. People said: “Abu al-Ashʿath, Abu al-Ashʿath”. He sat down. I said to him: “Narrate to our brother the story concerning ʿUbādah ibn al-Ṣāmit”. He said: “Yes. We went on an expedition with Muʿāwiyah when Muʿāwiyah was the commander. We took plenty of war gains, and what we gained included some silver articles. Muʿāwiyah ordered a man to sell these articles in exchange for people’s shares [of war gains]. People rushed to do this. ʿUbādah ibn al-Ṣāmit was informed”. He stood up and said: “I heard God’s Messenger (peace be upon him) prohibiting the sale of gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, unless it is like for like, same for same. Whoever gives or requests an increase deals usuriously”. People gave back what they had taken.**

Muʿāwiyah was informed and he stood up giving a speech. He said: “How come some men narrate things attributing them to God’s Messenger (peace be upon him)? We used to attend him and to be in his company, but we did not hear such hadiths from him”. ʿUbādah ibn al-Ṣāmit rose and repeated the same story. He then said: “We shall narrate what we heard from God’s Messenger (peace be upon him), even if Muʿāwiyah dislikes it (or perhaps he said: despite Muʿāwiyah). I do not care if I do not accompany him with his troops on a dark night”. Ḥammād said: “This or something similar”.’

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلاَبَةَ قَالَ: كُنْتُ بِالشَّامِ فِي حَلْقَةٍ فِيهَا مُسْلِمُ بْنُ يَسَارٍ، فَجَاءَ أَبُو الأَشْعَثِ. قَالَ: قَالُوا أَبُو الأَشْعَثِ، أَبُو الأَشْعَثِ! فَجَلَسَ، فَقُلْتُ لَهُ: حَدِّثْ أَخَانَا حَدِيثَ عُبَادَةَ بْنِ الصَّامِتِ. قَالَ: نَعَمْ، غَزَوْنَا غَزَاةً وَعَلَى النَّاسِ مُعَاوِيَةُ، فَغَنِمْنَا غَنَائِمَ كَثِيرَةً. فَكَانَ فِيمَا غَنِمْنَا آنِيَةٌ مِنْ فِضَّةٍ. فَأَمَرَ مُعَاوِيَةُ رَجُلاً أَنْ يَبِيعَهَا فِي أَعْطِيَاتِ النَّاسِ، فَتَسَارَعَ النَّاسُ فِي ذَلِكَ. فَبَلَغَ عُبَادَةَ بْنَ الصَّامِتِ، فَقَامَ فَقَالَ: إِنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَنْهَى عَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ، وَالْفِضَّةِ بِالْفِضَّةِ، وَالْبُرِّ بِالْبُرِّ، وَالشَّعِيرِ بِالشَّعِيرِ، وَالتَّمْرِ بِالتَّمْرِ، وَالْـمِلْحِ بِالْـمِلْحِ إِلاَّ سَوَاءً بِسَوَاءٍ، عَيْنًا بِعَيْنٍ. فَمَنْ زَادَ أَوِ ازْدَادَ فَقَدْ أَرْبَى. فَرَدَّ النَّاسُ مَا أَخَذُوا.

فَبَلَغَ ذَلِكَ مُعَاوِيَةَ، فَقَامَ خَطِيبًا فَقَالَ: أَلا مَا بَالُ رِجَالٍ يَتَحَدَّثُونَ عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَحَادِيثَ؟ قَدْ كُنَّا نَشْهَدُهُ وَنَصْحَبُهُ، فَلَمْ نَسْمَعْهَا مِنْهُ. فَقَامَ عُبَادَةُ بْنُ الصَّامِتِ، فَأَعَادَ الْقِصَّةَ. ثُمَّ قَالَ: لَنُحَدِّثَنَّ بِمَا سَمِعْنَا مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَإِنْ كَرِهَ مُعَاوِيَةُ - أَوْ قَالَ وَإِنْ رَغِمَ. مَا أُبَالِي أَنْ لاَ أَصْحَبَهُ فِي جُنْدِهِ لَيْلَةً سَوْدَاءَ. قَالَ حَمَّادٌ هَذَا أَوْ نَحْوَه.

Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated: both from ʿAbd al-Wahhāb al-Thaqafī; from Ayyūb; with the same chain of transmission: **a similar text.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ، جَمِيعًا عَنْ عَبْدِ الْوَهَّابِ الثَّقَفِيِّ، عَنْ أَيُّوبَ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

[3556–81]. (Dar al-Salam 3853) Abu Bakr ibn Abi Shaybah, ʿAmr al-Nāqid and Isḥāq ibn Ibrāhīm narrated (Ibn Abi Shaybah's text): Wakīʿ (Isḥāq said: 'reported' and the other two said: 'narrated'); Sufyān narrated; from Khālid al-Ḥadhdhā'; from Abu Qilābah; from Abu al-Ashʿath; from ʿUbādah ibn al-Ṣāmit. He said: **God's Messenger (peace be upon him) said**: **"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt: like for like, same for same, in spot exchange. If the exchange is of different kinds, you may sell as you please provided it is exchanged on the spot".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لِابْنِ أَبِي شَيْبَةَ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) وَكِيعٌ، حَدَّثَنَا سُفْيَانُ، عَنْ خَالِدٍ الْحَذَّاءِ، عَنْ أَبِي قِلاَبَةَ، عَنْ أَبِي الأَشْعَثِ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرُ بِالتَّمْرِ وَالْـمِلْحُ بِالْـمِلْحِ، مِثْلاً بِمِثْلٍ، سَوَاءً بِسَوَاءٍ، يَدًا بِيَدٍ. فَإِذَا اخْتَلَفَتْ هَذِهِ الأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ، إِذَا كَانَ يَدًا بِيَدٍ.

[3557–82]. (Dar al-Salam 3854) Abu Bakr ibn Abi Shaybah narrated:[iii] Wakīʿ narrated; Ismāʿīl ibn Muslim al-ʿAbdī narrated;

Abu al-Mutawakkil al-Nājī narrated; from Abu Saʿīd al-Khudrī. He said: **‘God’s Messenger (peace be upon him) said: “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt: like for like, in spot exchange. Whoever gives or requests an increase deals usuriously: both giver and taker are in the same position”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكِيعٌ، حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُسْلِمٍ الْعَبْدِيُّ، حَدَّثَنَا أَبُو الْمُتَوَكِّلِ النَّاجِيُّ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرُ بِالتَّمْرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلاً بِمِثْلٍ، يَدًا بِيَدٍ، فَمَنْ زَادَ أَوِ اسْتَزَادَ فَقَدْ أَرْبَى، الآخِذُ وَالْمُعْطِي فِيهِ سَوَاءٌ».

[3558–000]. (Dar al-Salam 3855) ʿAmr al-Nāqid narrated: Yazīd ibn Ḥārūn narrated; Sulaymān al-Rabaʿī reported; Abu al-Mutawakkil al-Nājī narrated; from Abu Saʿīd al-Khudrī. He said: **‘God’s Messenger (peace be upon him) said: “Gold for gold: like for like…”’ he added the same text.**

حَدَّثَنَا عَمْرٌو النَّاقِدُ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، أَخْبَرَنَا سُلَيْمَانُ الرَّبَعِيُّ، حَدَّثَنَا أَبُو الْمُتَوَكِّلِ النَّاجِيُّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الذَّهَبُ بِالذَّهَبِ مِثْلاً بِمِثْلٍ». فَذَكَرَ بِمِثْلِهِ.

[3559–83]. (Dar al-Salam 3856) Abu Kurayb Muhammad ibn al-ʿAlā’ and Wāṣil ibn ʿAbd al-Aʿlā narrated:[iv] both said: Ibn Fuḍayl narrated; from his father; from Abu Zurʿah; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “Dates for dates, wheat for wheat, barley for barley and salt for salt: like**

for like, in spot exchange. Whoever gives or requests an increase commits usury unless kinds are different”.’

حَدَّثَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلاَءِ، وَوَاصِلُ بْنُ عَبْدِ الأَعْلَى قَالا: حَدَّثَنَا ابْنُ فُضَيْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي زُرْعَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «التَّمْرُ بِالتَّمْرِ، وَالْحِنْطَةُ بِالْحِنْطَةِ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلاً بِمِثْلٍ، يَدًا بِيَدٍ. فَمَنْ زَادَ أَوِ اسْتَزَادَ فَقَدْ أَرْبَى، إِلاَّ مَا اخْتَلَفَتْ أَلْوَانُهُ».

[3560–000].[v] Abu Saʿīd al-Ashajj narrated: al-Muḥāribī narrated; from Fuḍayl ibn Ghazwān; with the same chain of transmission: **the same text but did not mention ‘in spot exchange’.**

وَحَدَّثَنِيهِ أَبُو سَعِيدٍ الأَشَجُّ، حَدَّثَنَا الْمُحَارِبِيُّ، عَنْ فُضَيْلِ بْنِ غَزْوَانَ، بِهَذَا الإِسْنَادِ: وَلَمْ يَذْكُرْ: «يَدًا بِيَدٍ».

[3561–84]. (Dar al-Salam 3857) Abu Kurayb and Wāṣil ibn ʿAbd al-Aʿlā narrated:[vi] both said: Ibn Fuḍayl narrated; from his father; from Ibn Abi Nuʿm; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “Gold for gold: weight for weight, like for like; and silver for silver: weight for weight, like for like. Whoever gives or requests an increase, it becomes usury”.’**

حَدَّثَنَا أَبُو كُرَيْبٍ، وَوَاصِلُ بْنُ عَبْدِ الأَعْلَى، قَالا: حَدَّثَنَا ابْنُ فُضَيْلٍ، عَنْ أَبِيهِ، عَنِ ابْنِ أَبِي نُعْمٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الذَّهَبُ بِالذَّهَبِ، وَزْنًا بِوَزْنٍ، مِثْلاً بِمِثْلٍ. وَالْفِضَّةُ بِالْفِضَّةِ، وَزْنًا بِوَزْنٍ، مِثْلاً بِمِثْلٍ. فَمَنْ زَادَ أَوِ اسْتَزَادَ فَهُوَ رِبًا».

[3562–85]. (Dar al-Salam 3858) ʿAbdullāh ibn Maslamah al-Qaʿnabī narrated:[vii] Sulaymān (meaning Ibn Bilāl) narrated; from Mūsā ibn Abi Tamīm; from Saʿīd ibn Yasār; from Abu Hurayrah; that **'God's Messenger (peace be upon him) said: "A dīnār for a dīnār: no difference between them; and a dirham for a dirham: no difference between them".'**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ، حَدَّثَنَا سُلَيْمَانُ (يَعْنِي ابْنَ بِلاَلٍ)، عَنْ مُوسَى بْنِ أَبِي تَمِيمٍ، عَنْ سَعِيدِ بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الدِّينَارُ بِالدِّينَارِ، لا فَضْلَ بَيْنَهُمَا. وَالدِّرْهَمُ بِالدِّرْهَمِ، لا فَضْلَ بَيْنَهُمَا.

Abu al-Ṭāhir narrated: ʿAbdullāh ibn Wahb reported; he said: I heard Mālik ibn Anas say: Mūsā ibn Abi Tamīm narrated to me: with the same chain of transmission: **the same text.**

حَدَّثَنِيهِ أَبُو الطَّاهِرِ، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، قَالَ سَمِعْتُ مَالِكَ بْنَ أَنَسٍ، يَقُولُ حَدَّثَنِي مُوسَى بْنُ أَبِي تَمِيمٍ، بِهَذَا الإِسْنَادِ مِثْلَهُ.

Text Explanation

Hadith No. 3554 quotes the Prophet (peace be upon him) saying: 'Silver for gold is usurious unless exchanged on the spot; wheat for wheat is usurious unless exchanged on the spot; barley for barley is usurious unless exchanged on the spot; and dates for dates is usurious unless exchanged on the spot'. The hadith states a condition of spot exchange in sales involving bartering articles that are liable to usury, if they have the same reason for prohibition, whether they are of the same type such as gold for gold, or of different types such as gold for silver. Thus, the Prophet mentions different

types, ‘silver for gold’, so as to alert to any deal involving quantities of the same type. Mālikī scholars maintain that this hadith states a condition that the exchange must take place immediately after the contract has been made. According to them, if the exchange is delayed after the contract, the deal is invalid even if the two parties are still together. According to our school, if the handing over takes place while the two parties are together and have not parted, the sale remains valid even if the exchange is delayed after the contract by a day or longer. The important condition is that the two parties do not part before the exchange. The same view is held by Abu Ḥanīfah and other scholars. This hadith does not provide an argument in support of the Mālikī scholars’ view.

The hadith mentions that Ṭalḥah ibn ʿUbaydullāh wanted to make a currency exchange taking the gold from the seller and pay him the silver when the servant arrived. Ṭalḥah thought that this was valid like other transactions. He was unaware of the ruling on such exchange. When ʿUmar told him of the relevant hadith, he abandoned the proposed deal.

Hadith No. 3556 mentions: ‘wheat for wheat, barley for barley, dates for dates and salt for salt: like for like, same for same, in spot exchange. If the exchange is of different kinds, you may sell as you please provided it is exchanged on the spot’. The hadith provides clear evidence that wheat and barley are two different types. This is agreed upon by al-Shāfiʿī, Abu Ḥanīfah, al-Thawrī, scholars of Hadith and Fiqh, as well as others. Mālik, al-Layth, al-Awzāʿī, and most early scholars of Madinah and Syria say that they are one type. This view is also attributed to ʿUmar, Saʿīd and other early scholars. They agree that millet, corn and rice are three different types, except for al-Layth ibn Saʿd and Ibn Wahb who claim that all three are one type. The Prophet says in hadith No. 3557 that ‘whoever gives or requests an increase deals usuriously’. This means that both the one who pays the excess and the one who takes it are guilty of the sin of usury.

Hadith No. 3555 mentions the case when ʿUbādah ibn al-Ṣāmit explained what the Prophet said about usurious exchanges. When he did

this, the people ‘gave back what they had taken’. This is clear evidence that such a transaction is invalid. In this hadith ʿUbādah responds to the criticism of Muʿāwiyah, the Caliph, saying: ‘We shall narrate what we heard from God’s Messenger (peace be upon him), even if Muʿāwiyah dislikes it, or perhaps he said: despite Muʿāwiyah’. This statement emphasizes the importance of informing people of the Sunnah and spreading information, no matter who dislikes it. The truth must be stated, even if it is in opposition to the view of the ruler or anyone in high position.

The hadith emphasizes the condition of the exchange being done on the spot, even when the articles to be exchanged are of different types. Ismāʿīl ibn ʿUlayyah says that it is permissible that the exchange takes place in different times, but his view is countered by these hadiths and the unanimity of scholars. Perhaps he was unaware of this hadith. Had he been aware of it, he would not have held a different view.

Transmission

The chain of transmission of Hadith 3558 includes a narrator called Sulaymān al-Rabaʿī. His name al-Rabaʿī means that he is affiliated to the Rabīʿah tribe.

i. Related by al-Bukhari, 2134, 2170 and 2174; Abu Dāwūd in a shorter version, 3348; al-Tirmidhī, 1243; al-Nasā’ī in a shorter version, 4572; Ibn Mājah, 2253 and 2260.

ii. Related by Abu Dāwūd in a shorter version, 3349 and 3350; al-Tirmidhī, 1240.

iii. Related by al-Nasā’ī, 4579.

iv. Related by al-Nasā’ī, 4573.

v. In Dar al-Salam’s edition, this hadith is attached to the one before it.

vi. Related by al-Nasā’ī, 4583; Ibn Mājah in a similar version, 2255.

vii. Related by al-Nasā’ī, 4581.

CHAPTER 16

THE PROHIBITION OF SELLING SILVER FOR GOLD FOR FUTURE PAYMENT

[3563–86]. (Dar al-Salam 3859) Muhammad ibn Ḥātim ibn Maymūn narrated:[i] Sufyān ibn ʿUyaynah narrated; from ʿArm; from Abu al-Minhāl. He said: **‘A partner of mine sold some silver with payment delayed until the season, or the pilgrimage. He came and told me. I said that this is not valid. He said that he sold it in the market and no one objected to him. I went to al-Barā’ ibn ʿĀzib and asked him. He said: “When God’s Messenger (peace be upon him) came to Madinah, we used to make such a deal. He said: “Whatever is exchanged on the spot is appropriate, and whatever involves delayed payment is usury. Yet, go to Zayd ibn Arqam [and ask him]; his is a bigger business than mine”. I went to him and asked him. He told me the same.’**

حَدَّثَنَا مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرٍو، عَنْ أَبِي الْـمِنْهَالِ قَالَ: بَاعَ شَرِيكٌ لِي وَرِقًا بِنَسِيئَةٍ إِلَى الْـمَوْسِمِ، أَوْ إِلَى الْحَجِّ. فَجَاءَ إِلَيَّ فَأَخْبَرَنِي. فَقُلْتُ: هَذَا أَمْرٌ لاَ يَصْلُحُ. قَالَ: قَدْ بِعْتُهُ فِي السُّوقِ فَلَمْ يُنْكِرْ ذَلِكَ عَلَيَّ أَحَدٌ. فَأَتَيْتُ الْبَرَاءَ بْنَ عَازِبٍ، فَسَأَلْتُهُ فَقَالَ: قَدِمَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الْـمَدِينَةَ وَنَحْنُ نَبِيعُ هَذَا الْبَيْعَ فَقَالَ: «مَا كَانَ

يَدًا بِيَدٍ، فَلاَ بَأْسَ بِهِ. وَمَا كَانَ نَسِيئَةً فَهُوَ رِبًا». وَائْتِ زَيْدَ بْنَ أَرْقَمَ، فَإِنَّهُ أَعْظَمُ تِجَارَةً مِنِّي. فَأَتَيْتُهُ فَسَأَلْتُهُ، فَقَالَ مِثْلَ ذَلِكَ.

[3564–87]. (Dar al-Salam 3860) ʿUbaydullāh ibn Muʿādh al-ʿAnbarī narrated: my father narrated; Shuʿbah narrated; from Ḥabīb; that he heard Abu al-Minhāl say: **‘I asked al-Barā’ ibn ʿĀzib about currency exchange [i.e., gold for silver]. He said: “Ask Zayd ibn Arqam; he knows better”. I asked Zayd, and he said: “Ask al-Barā’; he knows better”. Then they said: “God’s Messenger (peace be upon him) prohibited selling silver for gold for future payment”.’**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ، عَنْ حَبِيبٍ، أَنَّهُ سَمِعَ أَبَا الْمِنْهَالِ يَقُولُ: سَأَلْتُ الْبَرَاءَ بْنَ عَازِبٍ عَنِ الصَّرْفِ، فَقَالَ: سَلْ زَيْدَ بْنَ أَرْقَمَ، فَهُوَ أَعْلَمُ. فَسَأَلْتُ زَيْدًا، فَقَالَ: سَلِ الْبَرَاءَ فَإِنَّهُ أَعْلَمُ. ثُمَّ قَالا: «نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْوَرِقِ بِالذَّهَبِ دَيْنًا».

[3565–88]. (Dar al-Salam 3861–3862) Abu al-Rabīʿ al-ʿAtakī narrated:[ii] ʿAbbād ibn al-ʿAwwām narrated; Yaḥyā ibn Abi Isḥāq reported; ʿAbd al-Raḥmān ibn Abi Bakrah narrated; from his father. He said: **‘God’s Messenger (peace be upon him) prohibited trading silver for silver or gold for gold unless it is like for like. He told us to buy silver for gold as we wish and buy gold for silver as we wish. A man asked him: “Is it hand to hand [i.e., spot exchange]?” He said: “This is what I heard”.’**

حَدَّثَنَا أَبُو الرَّبِيعِ الْعَتَكِيُّ، حَدَّثَنَا عَبَّادُ بْنُ الْعَوَّامِ، أَخْبَرَنَا يَحْيَى بْنُ أَبِي إِسْحَاقَ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرَةَ، عَنْ أَبِيهِ قَالَ: نَهَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنِ الْفِضَّةِ بِالْفِضَّةِ، وَالذَّهَبِ بِالذَّهَبِ، إِلاَّ سَوَاءً بِسَوَاءٍ. وَأَمَرَنَا أَنْ نَشْتَرِيَ الْفِضَّةَ بِالذَّهَبِ كَيْفَ شِئْنَا. وَنَشْتَرِيَ الذَّهَبَ بِالْفِضَّةِ كَيْفَ شِئْنَا. قَالَ: فَسَأَلَهُ رَجُلٌ فَقَالَ: يَدًا بِيَدٍ؟ فَقَالَ: هَكَذَا سَمِعْتُ.

Isḥāq ibn Manṣūr narrated to me: Yaḥyā ibn Ṣāliḥ reported; Muʿāwiyah narrated; from Yaḥyā (who is Ibn Abi Kathīr); from Yaḥyā ibn Abi Isḥāq; that ʿAbd al-Raḥmān ibn Abi Bakrah reported to him; that Abu Bakrah said: **‘God’s Messenger (peace be upon him) has forbidden us…’ the same text.**

حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا يَحْيَى بْنُ صَالِحٍ، حَدَّثَنَا مُعَاوِيَةُ، عَنْ يَحْيَى (وَهُوَ ابْنُ أَبِي كَثِيرٍ)، عَنْ يَحْيَى بْنِ أَبِي إِسْحَاقَ، أَنَّ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرَةَ أَخْبَرَهُ، أَنَّ أَبَا بَكْرَةَ قَالَ: نَهَانَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، بِمِثْلِهِ.

Text Explanation

The prohibition in these hadiths pertains to selling silver for gold or gold for silver if the price is to be paid at some time in the future. To sell it for an owed price that is already due is permissible. In hadith No. 3565, the Prophet says that selling silver for gold or gold for silver may be done ‘as we wish’. This means whatever is agreed about measure or quantity is permissible, but on condition that payment is due and that the exchange is made at the time when the deal is done, before the buyer and seller part company.

i. Related by al-Bukhari, 3939 and in a shorter versin 2016, 2180, 2181, and in a similar version, 2497 and 2498; al-Nasā'ī, 4589, 4590 and 4591.

ii. Related by al-Bukhari, 2175 and in a shorter version, 2182; al-Nasā'ī, 4592 and 4593.

CHAPTER 17

SELLING A NECKLACE OF GOLD AND BEADS

[3566–89]. (Dar al-Salam 3863) Abu al-Ṭāhir Ahmad ibn ʿAmr ibn Sarḥ narrated to me: Ibn Wahb reported; Abu Hāni' al-Khawlānī reported to me; that he heard ʿUlayy ibn Rabāḥ al-Lakhmī say: I heard Faḍālah ibn ʿUbayd al-Anṣārī say: **'When he was at Khaybar, God's Messenger was brought a necklace with beads and gold. It was part of the war gains being sold. God's Messenger (peace be upon him) ordered that the gold in the necklace should be removed separately. He then said to the people: "Gold may be sold for gold: weight for equal weight".'**

حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي أَبُو هَانِئٍ الْخَوْلاَنِيُّ أَنَّهُ سَمِعَ عُلَىَّ بْنَ رَبَاحٍ اللَّخْمِيَّ يَقُولُ: سَمِعْتُ فَضَالَةَ بْنَ عُبَيْدٍ الأَنْصَارِيَّ يَقُولُ: أُتِيَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهُوَ بِخَيْبَرَ بِقِلاَدَةٍ فِيهَا خَرَزٌ وَذَهَبٌ، وَهِيَ مِنَ الْمَغَانِمِ تُبَاعُ. فَأَمَرَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِالذَّهَبِ الَّذِي فِي الْقِلاَدَةِ فَنُزِعَ وَحْدَهُ. ثُمَّ قَالَ لَهُمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الذَّهَبُ بِالذَّهَبِ وَزْنًا بِوَزْنٍ».

[3567–90]. (Dar al-Salam 3864–3865) Qutaybah ibn Saʿīd narrated:[i] Layth narrated: from Abu Shujāʿ Saʿīd ibn Yazīd; from Khālid ibn Abi ʿImrān; from Ḥanash al-Ṣanʿānī; from Faḍālah ibn ʿUbayd. He said: **'At the time of Khaybar, I bought a necklace of**

gold and beads for twelve dīnārs. When I separated its components, and I found in it more than twelve dīnārs. I mentioned this to the Prophet, and he said: “It cannot be sold until it is separated”.’

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنْ أَبِي شُجَاعٍ سَعِيدِ بْنِ يَزِيدَ، عَنْ خَالِدِ بْنِ أَبِي عِمْرَانَ، عَنْ حَنَشٍ الصَّنْعَانِيِّ، عَنْ فَضَالَةَ بْنِ عُبَيْدٍ قَالَ: اشْتَرَيْتُ يَوْمَ خَيْبَرَ قِلاَدَةً بِاثْنَىْ عَشَرَ دِينَارًا، فِيهَا ذَهَبٌ وَخَرَزٌ، فَفَصَّلْتُهَا، فَوَجَدْتُ فِيهَا أَكْثَرَ مِنِ اثْنَىْ عَشَرَ دِينَارًا. فَذَكَرْتُ ذَلِكَ لِلنَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «لا تُبَاعُ حَتَّى تُفَصَّلَ».

Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated: both said: Ibn Mubārak narrated; from Saʿīd ibn Yazīd; with the same chain of transmission: **a similar text.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ قَالا: حَدَّثَنَا ابْنُ مُبَارَكٍ، عَنْ سَعِيدِ بْنِ يَزِيدَ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

[3568–91]. (Dar al-Salam 3866) Qutaybah ibn Saʿīd narrated: Layth narrated: from Ibn Abi Jaʿfar; from al-Julāḥ Abu Kathīr; Ḥanash al-Ṣanʿānī narrated to me; from Faḍālah ibn ʿUbayd. He said: **‘We were with God’s Messenger (peace be upon him) at Khaybar, and we traded with the Jews: an *ouqiyyah* of gold for two or three dīnārs. The Prophet said: “Do not sell gold for gold unless it is weight for equal weight”.’**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ أَبِي جَعْفَرٍ، عَنِ الْجُلاَحِ أَبِي كَثِيرٍ، حَدَّثَنِي حَنَشٌ الصَّنْعَانِيُّ، عَنْ فَضَالَةَ بْنِ عُبَيْدٍ، قَالَ: كُنَّا مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَوْمَ خَيْبَرَ،

نُبَايِعُ الْيَهُودَ الْوُقِيَّةَ الذَّهَبَ بِالدِّينَارَيْنِ وَالثَّلاَثَةِ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلاَّ وَزْنًا بِوَزْنٍ».

[3569–92]. (Dar al-Salam 3867) Abu al-Ṭāhir narrated to me: Ibn Wahb reported; from Qurrah ibn ʿAbd al-Raḥmān al-Maʿāfirī, ʿAmr ibn al-Ḥārith and others; that ʿĀmir ibn Yaḥyā al-Maʿāfirī reported; from Ḥanash; that he said: **‘We were with Faḍālah ibn ʿUbayd on an expedition. A necklace with gold, silver and jewels was given to me and my companions. I wanted to buy it. I asked Faḍālah ibn ʿUbayd and he said: Take out its gold and put it on the scales and put your gold on the other and take only a measure for an equal measure. I heard God’s Messenger (peace be upon him) say: “Whoever believes in God and the Last Day must not take anything other than measure for equal measure”.’**

حَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، عَنْ قُرَّةَ بْنِ عَبْدِ الرَّحْمَنِ الْـمَعَافِرِيِّ، وَعَمْرِو بْنِ الْحَارِثِ، وَغَيْرِهِمَا، أَنَّ عَامِرَ بْنَ يَحْيَى الْـمَعَافِرِيَّ، أَخْبَرَهُمْ عَنْ حَنَشٍ، أَنَّهُ قَالَ: كُنَّا مَعَ فَضَالَةَ بْنِ عُبَيْدٍ فِي غَزْوَةٍ، فَطَارَتْ لِي وَلأَصْحَابِي قِلاَدَةٌ فِيهَا ذَهَبٌ وَوَرِقٌ وَجَوْهَرٌ. فَأَرَدْتُ أَنْ أَشْتَرِيَهَا، فَسَأَلْتُ فَضَالَةَ بْنَ عُبَيْدٍ، فَقَالَ: انْزِعْ ذَهَبَهَا فَاجْعَلْهُ فِي كِفَّةٍ وَاجْعَلْ ذَهَبَكَ فِي كِفَّةٍ، ثُمَّ لاَ تَأْخُذَنَّ إِلاَّ مِثْلاً بِمِثْلٍ. فَإِنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ كَانَ يُؤْمِنُ بِاللهِ وَالْيَوْمِ الآخِرِ فَلاَ يَأْخُذَنَّ إِلاَّ مِثْلاً بِمِثْلٍ».

Text Explanation

Hadith No. 3566 shows that it is not permissible to sell gold together with something else for gold, until the gold is separated and sold for its equal

weight of gold, while the other item is sold for whatever the seller requests. Similarly, silver with something else cannot be sold for silver; nor can wheat with something else be sold for wheat; nor salt with something else for salt. The same applies to all goods where a usurious transaction can be effected. The items must be separated, whether the gold is much or little. The same also applies to other kinds.

This is a famous case discussed in the Fiqh books of al-Shāfiʿī, scholars of his school and others, and known as *mudd ʿajwah*, or a 'measure of dates'. A *mudd* is a volume unit estimated as to what an average man can hold in his two cupped hands. The case supposes selling a *mudd* of dates and one dirham for two *mudds* of dates or for two dirhams. The answer is that such a transaction is not permissible on the basis of this hadith. This is reported to be the ruling of ʿUmar ibn al-Khaṭṭāb and his son, and a group of early scholars. It is the view of al-Shāfiʿī, Ahmad, Isḥāq and Muhammad ibn ʿAbd al-Ḥakam of the Mālikī School. Abu Ḥanīfah, al-Thawarī and al-Ḥasan ibn Ṣāliḥ said that it is permissible to sell at more gold than it contains. If it is sold for the same amount of gold it contains or less, the sale is not permissible. Mālik and his disciples as well as other scholars said that it is permissible to sell a sword ornamented with gold or some other item that includes gold: it is permissible to sell such an item if the gold in it is secondary to something else. They consider that its gold should be one-third or less. Ḥammād ibn Abi Sulaymān said that it can be sold for gold, whatever its amount is, whether equal to it or more or less than it. This is wrong and contrary to the clear meaning of the hadith.

Our scholars support their argument with the hadith mentioning the sale of the necklace. Ḥanafī scholars respond that the gold in the necklace was more than twelve dīnārs and he bought it for twelve dīnārs. We do not permit such a sale, but we say that the sale is valid if the necklace is sold for an amount of gold that is more than the gold it contains. The excess gold will thus be in return for the beads and whatever else it contains alongside its gold. Thus, the sale becomes like two contracts. On the other hand, al-

Ṭaḥāwī responds that the Prophet disallowed the sale of the necklace because it was part of war gains, so that Muslims will not be undersold. These two arguments are weak, particularly al-Ṭaḥāwī's one, because it is a mere claim. Our scholars respond insisting that their view is the correct one and that these two arguments are wrong, citing in evidence that the Prophet says in hadith No. 3567: 'It cannot be sold until it is separated'. This is a clear statement, setting a condition of separating the items when selling, and whereby there is no distinction on the basis of the amount of gold when selling, and whether it was much or little. Moreover, there is no difference between war gains and other items being sold, but God knows best.

Hadith No. 3568 says: 'We traded with the Jews: an *ouqiyyah* of gold for two or three dīnārs. The Prophet said: 'Do not sell gold for gold unless it is weight for equal weight'. It seems that what Faḍālah, the Prophet's Companion, meant was that they bought an *ouqiyyah* of gold, beads and other things for two or three dīnārs. An *ouqiyyah* weighs forty dirhams. Needless to say, no one can buy such an amount of gold for two or three dīnārs, [which are equivalent to twenty or thirty dirhams]. This is the reason for the Prophet's Companions trading in this way, thinking that it is permissible, because the gold was mixed with other things. The Prophet explained to them that it is forbidden unless they separate the gold and sell it for an equal measure of gold.

i. Related by Abu Dāwūd in a similar and longer version, 3351, 3352 and 3533; al-Tirmidhī, 1255; al-Nasā'ī in similar versions, 4587 and 4588.

CHAPTER 18

SELLING FOOD LIKE FOR LIKE

[3570–93]. (Dar al-Salam 3868) Ḥārūn ibn Maʿrūf narrated: ʿAbdullāh ibn Wahb narrated; ʿAmr reported to me [H]. Also, Abu al-Ṭāhir narrated to me: Ibn Wahb reported; from ʿAmr ibn al-Ḥārith; that Abu al-Naḍr narrated to him; that Busr ibn Saʿīd narrated to him; from Maʿmar ibn ʿAbdullāh; that he **'sent his servant with one *ṣā*ʿ of wheat. He told him: "Sell it and buy barley in its place". The servant went [on this errand] and received one *ṣā*ʿ and a fraction of one *ṣā*ʿ extra. When he came back to Maʿmar, he told them. Maʿmar said to him: "Why did you do that? Go back and return it. Take no more than measure for equal measure. I used to hear God's Messenger say: 'Food for food: like for like'. Barley was our staple diet at the time". He was told: "The two are not of the same type". He said: "I fear that they are alike".'**

حَدَّثَنَا هَارُونُ بْنُ مَعْرُوفٍ، حَدَّثَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي عَمْرٌو، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، عَنْ عَمْرِو بْنِ الْحَارِثِ، أَنَّ أَبَا النَّضْرِ حَدَّثَهُ، أَنَّ بُسْرَ بْنَ سَعِيدٍ حَدَّثَهُ، عَنْ مَعْمَرِ بْنِ عَبْدِ اللهِ، أَنَّهُ أَرْسَلَ غُلاَمَهُ بِصَاعِ قَمْحٍ، فَقَالَ: بِعْهُ ثُمَّ اشْتَرِ بِهِ شَعِيرًا. فَذَهَبَ الْغُلاَمُ فَأَخَذَ صَاعًا وَزِيَادَةَ بَعْضِ صَاعٍ. فَلَمَّا جَاءَ مَعْمَرًا أَخْبَرَهُ بِذَلِكَ، فَقَالَ لَهُ مَعْمَرٌ: لِمَ فَعَلْتَ ذَلِكَ؟ انْطَلِقْ فَرُدَّهُ، وَلاَ تَأْخُذَنَّ إِلاَّ مِثْلاً بِمِثْلٍ. فَإِنِّي كُنْتُ أَسْمَعُ رَسُولَ اللهِ

صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «الطَّعَامُ بِالطَّعَامِ مِثْلاً بِمِثْلٍ». قَالَ: وَكَانَ طَعَامُنَا يَوْمَئِذٍ الشَّعِيرَ. قِيلَ لَهُ: فَإِنَّهُ لَيْسَ بِمِثْلِهِ. قَالَ: إِنِّي أَخَافُ أَنْ يُضَارِعَ.

[3571–94]. (Dar al-Salam 3869) ʿAbdullāh ibn Maslamah ibn Qaʿnab narrated:[i] Sulaymān (meaning Ibn Bilāl) narrated; from ʿAbd al-Majīd ibn Suhayl ibn ʿAbd al-Raḥmān; that he heard Saʿīd ibn al-Musayyib narrating; that Abu Hurayrah and Abu Saʿīd narrated to him; that **'God's Messenger (peace be upon him) sent a man from the Anṣārī ʿAdiy clan in charge of Khaybar. He brought dates of the Janīb type. God's Messenger (peace be upon him) asked him: "Are all Khaybar dates of such quality?" He said: "No, by God. We buy one *ṣāʿ* for two of heaped dates". The Prophet said: "Do not do that, but exchange measure for equal measure; or sell that and buy with its price of this. The same applies to weights".'**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبٍ، حَدَّثَنَا سُلَيْمَانُ (يَعْنِي ابْنَ بِلاَلٍ)، عَنْ عَبْدِ الْـمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ، أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْـمُسَيَّبِ يُحَدِّثُ، أَنَّ أَبَا هُرَيْرَةَ وَأَبَا سَعِيدٍ حَدَّثَاهُ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَعَثَ أَخَا بَنِي عَدِيٍّ الأَنْصَارِيَّ، فَاسْتَعْمَلَهُ عَلَى خَيْبَرَ. فَقَدِمَ بِتَمْرٍ جَنِيبٍ. فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَكُلُّ تَمْرِ خَيْبَرَ هَكَذَا»؟ قَالَ: لا وَاللهِ يَا رَسُولَ اللهِ، إِنَّا لَنَشْتَرِي الصَّاعَ بِالصَّاعَيْنِ مِنَ الْجَمْعِ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَفْعَلُوا، وَلَكِنْ مِثْلاً بِمِثْلٍ. أَوْ بِيعُوا هَذَا، وَاشْتَرُوا بِثَمَنِهِ مِنْ هَذَا. وَكَذَلِكَ الْـمِيزَانُ».

[3572–95]. (Dar al-Salam 3870) Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik; from ʿAbd al-Majīd ibn Suhayl ibn ʿAbd al-

Raḥmān ibn ʿAwf; from Saʿīd ibn al-Musayyib; from Abu Saʿīd al-Khudrī and Abu Hurayrah; that **‘God’s Messenger (peace be upon him) appointed a man in charge of Khaybar. He brought him dates of the Janīb type. God’s Messenger said to him: “Are all Khaybar dates of such quality?” He said: “No, by God. We buy one *ṣāʿ* of this for two *ṣāʿs* or two *ṣāʿs* for three [of other dates]”. The Prophet said: “Do not do that. Sell the low quality dates for money; then pay the money to buy the Janīb dates”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ عَبْدِ الْـمَجِيدِ بْنِ سُهَيْلِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، عَنْ سَعِيدِ بْنِ الْـمُسَيَّبِ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، وَعَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ اسْتَعْمَلَ رَجُلاً عَلَى خَيْبَرَ، فَجَاءَهُ بِتَمْرٍ جَنِيبٍ. فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَكُلُّ تَمْرِ خَيْبَرَ هَكَذَا»؟ فَقَالَ: لا وَاللهِ يَا رَسُولَ اللهِ. إِنَّا لَنَأْخُذُ الصَّاعَ مِنْ هَذَا بِالصَّاعَيْنِ، وَالصَّاعَيْنِ بِالثَّلاَثَةِ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «فَلاَ تَفْعَلْ. بِعِ الْجَمْعَ بِالدَّرَاهِمِ، ثُمَّ ابْتَعْ بِالدَّرَاهِمِ جَنِيبًا».

[3573–96]. (Dar al-Salam 3871) Isḥāq ibn Manṣūr narrated:[ii] Yaḥyā ibn Ṣāliḥ al-Wuḥāẓī reported; Muʿāwiyah narrated [H]. Also, Muhammad ibn Sahl al-Tamīmī and ʿAbdullāh ibn ʿAbd al-Raḥmān al-Dārimī narrated to me (their text); all from Yaḥyā ibn Ḥassān; Muʿāwiyah (who is Ibn Sallām) narrated; Yaḥyā (who is Ibn Abi Kathīr) reported to me. He said: I heard ʿUqbah ibn ʿAbd al-Ghāfir say: I heard Abu Saʿīd say: **‘Bilāl brought some Barnī dates. God’s Messenger (peace be upon him) said to him: “Where did this come from?” Bilāl said: “We had some low quality dates and I sold two *ṣāʿs* of it for one *ṣāʿ* [of this] for the Prophet to eat. At this point, God’s Messenger said: ‘Ooooh!**

The very usury. Do not do that. If you want to buy dates, sell your dates for something else, then buy [the dates you want] with the price”.”’

Ibn Sahl did not mention the words, **‘at this point’** in his narration.

حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا يَحْيَى بْنُ صَالِحٍ الْوُحَاظِيُّ، حَدَّثَنَا مُعَاوِيَةُ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ سَهْلٍ التَّمِيمِيُّ، وَعَبْدُ اللهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ (وَاللَّفْظُ لَهُمَا)، جَمِيعًا عَنْ يَحْيَى بْنِ حَسَّانَ، حَدَّثَنَا مُعَاوِيَةُ (وَهُوَ ابْنُ سَلاَّمٍ)، أَخْبَرَنِي يَحْيَى (وَهُوَ ابْنُ أَبِي كَثِيرٍ) قَالَ: سَمِعْتُ عُقْبَةَ بْنَ عَبْدِ الْغَافِرِ يَقُولُ: سَمِعْتُ أَبَا سَعِيدٍ يَقُولُ: جَاءَ بِلاَلٌ بِتَمْرٍ بَرْنِيٍّ، فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مِنْ أَيْنَ هَذَا»؟ فَقَالَ بِلاَلٌ: تَمْرٌ كَانَ عِنْدَنَا رَدِيءٌ، فَبِعْتُ مِنْهُ صَاعَيْنِ بِصَاعٍ، لِمَطْعَمِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَقَالَ رَسُولُ اللهِ عِنْدَ ذَلِكَ: «أَوَّهْ! عَيْنُ الرِّبَا. لاَ تَفْعَلْ. وَلَكِنْ إِذَا أَرَدْتَ أَنْ تَشْتَرِيَ التَّمْرَ، فَبِعْهُ بِبَيْعٍ آخَرَ، ثُمَّ اشْتَرِ بِهِ».

لَمْ يَذْكُرِ ابْنُ سَهْلٍ فِي حَدِيثِهِ عِنْدَ ذَلِكَ.

[3574–97]. (Dar al-Salam 3872) Salamah ibn Shabīb narrated: al-Ḥasan ibn Aʿyan narrated; Maʿqil narrated; from Abu Qazaʿah al-Bāhilī; from Abu Naḍrah; from Abu Saʿīd. He said: **‘God’s Messenger (peace be upon him) was brought some dates. He said: “These dates are not ours”. The man said: “Messenger of God, we sold two *ṣāʿs* of our dates for one *ṣāʿ* of these”. God’s Messenger said to him: “This is usury. Return it, then sell our dates and buy of this type for us”.’**

وَحَدَّثَنَا سَلَمَةُ بْنُ شَبِيبٍ، حَدَّثَنَا الْحَسَنُ بْنُ أَعْيَنَ، حَدَّثَنَا مَعْقِلٌ، عَنْ أَبِي قَزَعَةَ الْبَاهِلِيِّ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدٍ قَالَ: أُتِيَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِتَمْرٍ فَقَالَ: «مَا هَذَا

التَّمْرُ مِنْ تَمْرِنَا». فَقَالَ الرَّجُلُ: يَا رَسُولَ اللهِ، بِعْنَا تَمْرَنَا صَاعَيْنِ بِصَاعٍ مِنْ هَذَا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «هَذَا الرِّبَا. فَرُدُّوهُ ثُمَّ بِيعُوا تَمْرَنَا، وَاشْتَرُوا لَنَا مِنْ هَذَا».

[3575–98]. (Dar al-Salam 3873) Isḥāq ibn Manṣūr narrated to me:[iii] ʿUbaydullāh ibn Mūsā narrated; from Shaybān; from Yaḥyā; from Abu Salamah; from Abu Saʿīd: **‘We used to be given collected dates during God’s Messenger’s life time. These were mixed types of dates. We used to sell two *ṣāʿs* of it for one *ṣāʿ*. God’s Messenger was informed of this and he said: “No two *ṣāʿs* of dates for one *ṣāʿ*, and no two *ṣāʿs* of wheat for one *ṣāʿ*, and no one dirham for two dirhams”.’**

حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُوسَى، عَنْ شَيْبَانَ، عَنْ يَحْيَى، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي سَعِيدٍ، قَالَ: كُنَّا نُرْزَقُ تَمْرَ الْجَمْعِ عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَهُوَ الْخِلْطُ مِنَ التَّمْرِ. فَكُنَّا نَبِيعُ صَاعَيْنِ بِصَاعٍ، فَبَلَغَ ذَلِكَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «لا صَاعَيْ تَمْرٍ بِصَاعٍ، وَلاَ صَاعَيْ حِنْطَةٍ بِصَاعٍ، وَلا دِرْهَمَ بِدِرْهَمَيْنِ».

[3576–99]. (Dar al-Salam 3874) ʿAmr al-Nāqid narrated to me: Ismāʿīl ibn Ibrāhīm narrated; from Saʿīd al-Jurayrī; from Abu Naḍrah. He said: **‘I asked Ibn ʿAbbās about currency exchange. He said: “Is it spot exchange?” I said: “Yes”. He said: “There is no harm in that”. I told Abu Saʿīd, saying that I asked Ibn ʿAbbās about currency exchange and he asked: “Is it an exchange on the spot?” I said: “Yes” and he said, “there is no harm”. He [meaning Abu Saʿīd al-Khudrī] said: “Did he say this? I shall write to him asking him not to approve of it to you”. He added: “By God, one of God’s Messenger’s servants**

brought him some dates, and he thought it strange. He said: 'It seems that these dates are not from our land'. The servant said: 'The dates of our land (or our dates) had something [meaning some defect] last year. I exchanged it for this, giving some extra'. The Prophet said: 'You have doubled; you have committed usury. Never do this. If you have something wrong with your dates, sell them, then buy with the money whatever dates you want'."'

حَدَّثَنِي عَمْرٌو النَّاقِدُ، حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، عَنْ سَعِيدٍ الْجُرَيْرِيِّ، عَنْ أَبِي نَضْرَةَ قَالَ: سَأَلْتُ ابْنَ عَبَّاسٍ عَنِ الصَّرْفِ، فَقَالَ: أَيَدًا بِيَدٍ؟ قُلْتُ نَعَمْ. قَالَ: فَلا بَأْسَ بِهِ. فَأَخْبَرْتُ أَبَا سَعِيدٍ، فَقُلْتُ إِنِّي سَأَلْتُ ابْنَ عَبَّاسٍ عَنِ الصَّرْفِ فَقَالَ أَيَدًا بِيَدٍ؟ قُلْتُ نَعَمْ. قَالَ فَلاَ بَأْسَ بِهِ. قَالَ: أَوَقَالَ ذَلِكَ؟ إِنَّا سَنَكْتُبُ إِلَيْهِ، فَلاَ يُفْتِيكُمُوهُ. قَالَ: فَوَاللهِ لَقَدْ جَاءَ بَعْضُ فِتْيَانِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِتَمْرٍ، فَأَنْكَرَهُ فَقَالَ: «كَأَنَّ هَذَا لَيْسَ مِنْ تَمْرِ أَرْضِنَا»! قَالَ: كَانَ فِي تَمْرِ أَرْضِنَا – أَوْ فِي تَمْرِنَا – الْعَامَ بَعْضُ الشَّيْءِ، فَأَخَذْتُ هَذَا وَزِدْتُ بَعْضَ الزِّيَادَةِ. فَقَالَ: «أَضْعَفْتَ، أَرْبَيْتَ. لاَ تَقْرَبَنَّ هَذَا. إِذَا رَابَكَ مِنْ تَمْرِكَ شَيْءٌ فَبِعْهُ، ثُمَّ اشْتَرِ الَّذِي تُرِيدُ مِنَ التَّمْرِ.

[3577–100]. (Dar al-Salam 3875) Isḥāq ibn Ibrāhīm narrated: ʿAbd al-Aʿlā reported; Dāwūd reported; from Abu Naḍrah. He said: **'I asked Ibn ʿUmar and Ibn ʿAbbās about currency exchange, and they thought it was acceptable. I was then sitting with Abu Saʿīd al-Khudrī and I asked him about currency exchange. He said: "Whatever is in excess is usury. I disliked what he said in the light of what they both said". He said: "I am only telling you what I heard from God's Messenger (peace be upon him).**

The man looking after his date trees brought him one *ṣāʿ* of good quality dates, but the Prophet's dates were of this type. The Prophet said to the man: "How come you bring these?" He said: "I took two *ṣāʿs* and bought this one *ṣāʿ* in exchange. In the market, the price of this is such and the price of that is so". God's Messenger said: "Woe to you! You have committed usury. If you want to do this, sell your dates for something, and then buy with that something whatever dates you wish".'

Abu Saʿīd said: 'Which is more likely to be usurious: dates for dates, or silver for silver?' He [meaning Abu Naḍrah] said: "I went to Ibn ʿUmar later and he forbade me to do it. I did not go to Ibn ʿAbbās. Abu al-Ṣahbā' told me that he asked Ibn ʿAbbās about it in Makkah and he disapproved of it".'

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عَبْدُ الأَعْلَى، أَخْبَرَنَا دَاوُدُ، عَنْ أَبِي نَضْرَةَ قَالَ: سَأَلْتُ ابْنَ عُمَرَ وَابْنَ عَبَّاسٍ عَنِ الصَّرْفِ، فَلَمْ يَرَيَا بِهِ بَأْسًا. فَإِنِّي لَقَاعِدٌ عِنْدَ أَبِي سَعِيدٍ الْخُدْرِيِّ فَسَأَلْتُهُ عَنِ الصَّرْفِ، فَقَالَ مَا زَادَ فَهُوَ رِبًا. فَأَنْكَرْتُ ذَلِكَ، لِقَوْلِهِمَا. فَقَالَ: لا أُحَدِّثُكَ إِلاَّ مَا سَمِعْتُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. جَاءَهُ صَاحِبُ نَخْلِهِ بِصَاعٍ مِنْ تَمْرٍ طَيِّبٍ. وَكَانَ تَمْرُ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ هَذَا اللَّوْنَ. فَقَالَ لَهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَنَّى لَكَ هَذَا»؟ قَالَ: انْطَلَقْتُ بِصَاعَيْنِ، فَاشْتَرَيْتُ بِهِ هَذَا الصَّاعَ. فَإِنَّ سِعْرَ هَذَا فِي السُّوقِ كَذَا، وَسِعْرَ هَذَا كَذَا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَيْلَكَ! أَرْبَيْتَ. إِذَا أَرَدْتَ ذَلِكَ، فَبِعْ تَمْرَكَ بِسِلْعَةٍ ثُمَّ اشْتَرِ بِسِلْعَتِكَ أَيَّ تَمْرٍ شِئْتَ».

قَالَ أَبُو سَعِيدٍ. فَالتَّمْرُ بِالتَّمْرِ أَحَقُّ أَنْ يَكُونَ رِبًا أَمِ الْفِضَّةُ بِالْفِضَّةِ؟ قَالَ: فَأَتَيْتُ ابْنَ عُمَرَ بَعْدُ فَنَهَانِي. وَلَمْ آتِ ابْنَ عَبَّاسٍ. قَالَ: فَحَدَّثَنِي أَبُو الصَّهْبَاءِ أَنَّهُ سَأَلَ ابْنَ عَبَّاسٍ عَنْهُ بِمَكَّةَ، فَكَرِهَهُ.

[3578–101]. (Dar al-Salam 3876) Muhammad ibn ʿAbbād, Muhammad ibn Ḥātim and Ibn Abi ʿUmar narrated to me:[iv] all from Sufyān ibn ʿUyaynah (Ibn ʿAbbād's text); he said: Sufyān narrated; from ʿAmr; from Abu Ṣāliḥ. He said: **'I heard Abu Saʿīd al-Khudrī say: "Dīnār for dīnār and dirham for dirham: like for like. Whoever gives or asks for an increase deals in usury". I said to him: "Ibn ʿAbbās says something different".' He said: 'I met Ibn ʿAbbās and said to him: "Is what you have been saying something you heard God's Messenger (peace be upon him) say, or you have found in God's Book?" He said: "I have not heard it from God's Messenger (peace be upon him) and I do not find it in God's Book. But Usāmah ibn Zayd narrated to me that the Prophet (peace be upon him) said: 'Usury is in deferment'."'**

حَدَّثَنِي مُحَمَّدُ بْنُ عَبَّادٍ، وَمُحَمَّدُ بْنُ حَاتِمٍ، وَابْنُ أَبِي عُمَرَ، جَمِيعًا عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ (وَاللَّفْظُ لِابْنِ عَبَّادٍ) قَالَ: حَدَّثَنَا سُفْيَانُ، عَنْ عَمْرٍو، عَنْ أَبِي صَالِحٍ قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ: الدِّينَارُ بِالدِّينَارِ، وَالدِّرْهَمُ بِالدِّرْهَمِ، مِثْلاً بِمِثْلٍ. مَنْ زَادَ أَوِ ازْدَادَ فَقَدْ أَرْبَى. فَقُلْتُ لَهُ: إِنَّ ابْنَ عَبَّاسٍ يَقُولُ غَيْرَ هَذَا. فَقَالَ: لَقَدْ لَقِيتُ ابْنَ عَبَّاسٍ فَقُلْتُ: أَرَأَيْتَ هَذَا الَّذِي تَقُولُ أَشَيْءٌ سَمِعْتَهُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، أَوْ وَجَدْتَهُ فِي كِتَابِ اللهِ عَزَّ وَجَلَّ؟ فَقَالَ: لَمْ أَسْمَعْهُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَلَمْ أَجِدْهُ فِي كِتَابِ اللهِ. وَلَكِنْ حَدَّثَنِي أُسَامَةُ بْنُ زَيْدٍ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الرِّبَا فِي النَّسِيئَةِ».

[3579–102]. (Dar al-Salam 3877) Abu Bakr ibn Abi Shaybah, ʿAmr al-Nāqid, Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated (ʿAmr's text): Sufyān ibn ʿUyaynah (Isḥāq said: 'reported' and the others said: 'narrated'); from ʿUbaydullāh ibn Abi Yazīd; that he heard Ibn

ʿAbbās say: **‘Usāmah ibn Zayd told me that the Prophet (peace be upon him) said: “Usury is in deferment”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ (وَاللَّفْظُ لِعَمْرٍو). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عُبَيْدِ اللهِ بْنِ أَبِي يَزِيدَ، أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: أَخْبَرَنِي أُسَامَةُ بْنُ زَيْدٍ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِنَّمَا الرِّبَا فِي النَّسِيئَةِ».

[3580–103]. (Dar al-Salam 3878) Zuhayr ibn Ḥarb narrated: ʿAffān narrated [H]. Also, Muhammad ibn Ḥātim narrated to me; Bahz narrated; both said: Wuhayb narrated; Ibn Ṭāwūs narrated; from his father; from Ibn ʿAbbās; from Usāmah ibn Zayd; that **‘God’s Messenger (peace be upon him) said: “No usury applies to what is exchanged on the spot, hand to hand”.’**

حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا عَفَّانُ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا بَهْزٌ، قَالا: حَدَّثَنَا وُهَيْبٌ، حَدَّثَنَا ابْنُ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ، عَنْ أُسَامَةَ بْنِ زَيْدٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا رِبًا فِيمَا كَانَ يَدًا بِيَدٍ».

[3581–104]. (Dar al-Salam 3879) Al-Ḥakam ibn Mūsā narrated: Hiql narrated; from al-Awzāʿī. He said: ʿAṭā’ ibn Abi Rabāḥ narrated to me; that **‘Abu Saʿīd al-Khudrī met Ibn ʿAbbās and said to him: “What you say about currency exchange: is it something you heard from God’s Messenger (peace be upon him), or something you find in God’s Book?” Ibn ʿAbbās said: “No. I do not say that. As for God’s Messenger, you knew him better; and as for God’s Book, I do not know it in it. However,**

Usāmah ibn Zayd told me that God's Messenger (peace be upon him) said: 'Usury is indeed in deferment'".'

حَدَّثَنَا الْحَكَمُ بْنُ مُوسَى، حَدَّثَنَا هِقْلٌ، عَنِ الأَوْزَاعِيِّ قَالَ: حَدَّثَنِي عَطَاءُ بْنُ أَبِي رَبَاحٍ، أَنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ، لَقِيَ ابْنَ عَبَّاسٍ فَقَالَ لَهُ: أَرَأَيْتَ قَوْلَكَ فِي الصَّرْفِ، أَشَيْئًا سَمِعْتَهُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ أَمْ شَيْئًا وَجَدْتَهُ فِي كِتَابِ اللهِ عَزَّ وَجَلَّ؟ فَقَالَ ابْنُ عَبَّاسٍ: كَلاَّ. لا أَقُولُ. أَمَّا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَأَنْتُمْ أَعْلَمُ بِهِ. وَأَمَّا كِتَابُ اللهِ فَلاَ أَعْلَمُهُ. وَلَكِنْ حَدَّثَنِي أُسَامَةُ بْنُ زَيْدٍ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَلا إِنَّمَا الرِّبَا فِي النَّسِيئَةِ».

Text Explanation

Hadith No. 3570 mentions that Maʿmar ibn ʿAbdullāh rejected what his servant did when he exchanged a measure of wheat for a greater measure of barley. Mālik cites this hadith in support of his view that wheat and barley are one type, and therefore they can only be exchanged in equal quantities. The view of our Shāfiʿī School and the majority of scholars is that they are two different types and, therefore, there is no harm in exchanging different quantities of them, like exchanging wheat for rice. Our evidence is the Prophet's statement: 'If the deal is of different types, you may sell as you wish'. In addition, Abu Dāwūd and al-Nasā'ī relate in a hadith narrated by ʿUbādah ibn al-Ṣāmit stating that the Prophet said: 'There is no harm in selling wheat for barley, with the barley being in a larger quantity, if the exchange is on the spot'. This hadith, No. 3570, provides no argument in support of Mālik's view that barley and wheat are one type. Maʿmar feared this and he took a precautionary measure to keep on the safe side.

Hadith No. 3571 mentions that the zakat collector the Prophet sent to Khaybar 'brought dates of the Janīb type. God's Messenger (peace be upon

him) asked him: “Are all Khaybar dates of such quality?” He said: “No, by God”. We buy one *ṣāʿ* for two of heaped dates. The Prophet said: “Do not do that, but exchange measure for equal measure; or sell that and buy with its price of this. The same applies to weights”.’ The Janīb is one of the best kinds of dates, while the heaped dates are of different types, put together because of their low quality. This hadith is understood to mean that the man who exchanged two measures of low quality dates for one measure of the superior type did not know that such an exchange is forbidden. Perhaps this incident took place shortly after usury was forbidden, or for some other reason.

This hadith is taken as evidence in support of our and other scholars’ view that *ʿaynah* is not forbidden. This is a sort of loophole used by some people to give them what is intended in usury. One person sells an article to another for, say, two hundred dirhams. He subsequently buys the same article from the man for one hundred dirhams. The evidence derived from this hadith is that the Prophet said: ‘Sell that and buy with its price of this’. He did not differentiate between buying from the one who bought the original commodity or from someone else. Therefore, there is no difference. All this is not forbidden according to al-Shāfiʿī and other scholars. Mālik and Ahmad say that it is forbidden.

The Prophet says in the hadith: ‘The same applies to weights’. This means that it is not permissible to exchange different weights of the same type of a product to which usury may apply. Therefore, the exchange must be a weight for an equal weight.

In hadith No. 3573, Bilāl mentions to the Prophet that he exchanged two measures of low-quality dates for one measure of dates of better quality. The Prophet’s response was: ‘Ooooh! The very usury’. The Arabic word is *awwah*, which expresses a feeling of pain or sorrow. He describes the exchange as the essence of forbidden usury.

In hadith No. 3574, the Prophet says to the one who exchanged two *ṣāʿs* of dates for one *ṣāʿ* of better dates: ‘This is usury. Return it’. This provides

evidence that when something is held as a result of an invalid sale, it should be returned to the seller, and when it is returned, the seller should refund the price. It may be said that the previous hadith does not mention the Prophet's order to return it. In answer we say, the two hadiths seem to refer to the same case and the Prophet ordered its return, but some narrators did not keep the order in memory. Therefore, we accept the addition made by reliable narrators. If it is confirmed that these were two different cases, we would say that the Prophet ordered the return of the goods, even though it has not been reported to us. Then if it is confirmed that he did not order the return of the goods, despite the reference to two cases, we would say it was because the seller was unknown. In this case, it becomes like a lost property belonging to one owed its price, which is the dates taken in compensation. As such, there is no problem with the hadith.

Hadith No. 3576 mentions that Abu Naḍrah asked Ibn ʿAbbās and Ibn ʿUmar about currency exchange and they approved of it if the exchange took place on the spot. Abu Saʿīd al-Khudrī objected and mentioned that the Prophet stated the prohibition of exchanging different quantities of the same type, mentioning the case of dates and the difference in quality. Both Ibn ʿUmar and Ibn ʿAbbās accepted the evidence and reverted to the ruling that it is forbidden.

In the following hadiths, Ibn ʿAbbās mentions that his earlier view was based on what Usāmah ibn Zayd had told him whereby the Prophet said: 'Usury is in deferment'. In hadith No. 3580, he quotes the Prophet saying: 'No usury applies to what is exchanged on the spot, hand to hand'.

What all this shows is that Ibn ʿUmar and Ibn ʿAbbās believed that usury does not apply to a transaction in which each party hands over what is due to the other on the spot. Thus, they thought it is acceptable to sell one dirham or dīnār for two dirhams or two dīnārs, or one measure of dates or wheat for two measures of dates or wheat, and so on. In other words, they thought that an exchange of different quantities of the same type does not constitute usury as long as the exchange was done on the spot. Only where

one party defers handing over what is due, does usury occur. Their view was based on what Usāmah narrated, quoting the Prophet: ‘Usury is in deferment’. Once they learnt the hadith narrated by Abu Saʿīd al-Khudrī, they changed their view and concurred that it is forbidden to exchange different measures or quantities of the same type. Muslim expressly confirms that they changed their views.

The hadith narrated by Usāmah quoting the Prophet says: ‘No usury applies to what is exchanged on the spot, hand to hand’. Some scholars say that this hadith is abrogated by the hadiths in this chapter. All Muslims agree on not practising what it obviously means. This indicates that it has been abrogated. However, some scholars give other interpretations of the hadith. One such interpretation is that it applies to items to which usury does not apply, such as clothing. For example: one party sells the other a described suit in exchange for a described article: if the exchange is done on the spot, it is appropriate, but if the article is to be handed over at a later date, the transaction is usurious. A second interpretation is that it applies to different types: they may be exchanged in different quantities if the exchange is immediate. The third is that the hadith narrated by Usāmah is expressed in general terms while the hadiths of ʿUbādah ibn al-Ṣāmit, Abu Saʿīd al-Khudrī and others are detailed. It is obligatory to put the detailed into practice and to attach the general to the detailed. This is the response given by al-Shāfiʿī.

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i. Related by al-Bukhari, 2201, 2202, 2302, 2303, 4244, 4245, 4246, 7350 and 7351; al-Nasā’ī, 4567 and 4568.

ii. Related by al-Bukhari in a longer version, 2312; al-Nasā’ī, 4571.

iii. Related by al-Bukhari in a shorter version, 2080; al-Nasā’ī, 4569 and 4570; Ibn Mājah, 2256.

iv. Related by al-Bukhari, 2178 and 2179; al-Nasā’ī in a shorter version, 4594 and 4595; Ibn Mājah, 2257.

CHAPTER 19

CURSING THE TAKER AND THE GIVER OF USURY

[3582–105]. (Dar al-Salam 3880) ʿUthmān ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated (ʿUthmān's text): Jarīr (Isḥāq said: 'reported' and ʿUthmān said: 'narrated'); from Mughīrah; he said that Shibāk asked Ibrāhīm and he narrated from ʿAlqamah; from ʿAbdullāh. He said: **'God's Messenger (peace be upon him) cursed the one who devours usury and the one who pays it'. I said: 'And the writer [of the contract] and its two witnesses'? He said: 'We only narrate what we have heard.'**

حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، (وَاللَّفْظُ لِعُثْمَانَ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ عُثْمَانُ حَدَّثَنَا) جَرِيرٌ، عَنْ مُغِيرَةَ، قَالَ: سَأَلَ شِبَاكٌ إِبْرَاهِيمَ، فَحَدَّثَنَا عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللهِ، قَالَ: لَعَنَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ آكِلَ الرِّبَا وَمُؤْكِلَهُ. قَالَ: قُلْتُ وَكَاتِبَهُ وَشَاهِدَيْهِ. قَالَ: إِنَّمَا نُحَدِّثُ بِمَا سَمِعْنَا.

[3583–106]. (Dar al-Salam 3881) Muhammad ibn al-Ṣabbāḥ, Zuhayr ibn Ḥarb and ʿUthmān ibn Abi Shaybah narrated: they said: Hushaym narrated; Abu al-Zubayr reported; from Jābir. He said: **'God's Messenger (peace be upon him) cursed the one who devours usury, the one who pays it, the one who writes [the**

agreement] and the two witnesses'. He said: 'They are all the same'.

حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ، وَزُهَيْرُ بْنُ حَرْبٍ، وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ، قَالُوا: حَدَّثَنَا هُشَيْمٌ، أَخْبَرَنَا أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: لَعَنَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ آكِلَ الرِّبَا وَمُوكِلَهُ وَكَاتِبَهُ وَشَاهِدَيْهِ، وَقَالَ هُمْ سَوَاءٌ.

Text Explanation

The second hadith, No. 3583, clearly states that it is forbidden to write down the agreement of a usurious transaction and to act as a witness to it. The Prophet curses those who perform such actions, making it clear that it is forbidden to help others commit acts that are prohibited in Islam, but God knows best.

CHAPTER 20

TAKING WHAT IS LAWFUL AND LEAVING THE DOUBTFUL

[3584–107]. (Dar al-Salam 3882–3884) Muhammad ibn ʿAbdullāh ibn Numayr al-Hamdānī narrated:[i] my father narrated; Zakariyyā' narrated; from al-Shaʿbī; from al-Nuʿmān ibn Bashīr. He said: I heard him say: **'I heard God's Messenger (peace be upon him) say, (and al-Nuʿmān pointed with his two fingers to his ears): "What is lawful is plain and what is unlawful is plain; and in between are doubtful matters unknown to many people. Whoever avoids doubtful matters clears himself in regard to his religion and his honour; but the one who slips into the doubtful will fall into what is unlawful. [He is] like a shepherd who pastures close to a sanctuary, all but grazing therein. For certain, every king has a sanctuary, and for certain God's sanctuary is His prohibitions. Indeed, there is in the body a morsel of flesh which, if it be whole, all the body is whole, and which, if it be diseased, all the body is diseased. Indeed, it is the heart".'**

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ الْهَمْدَانِيُّ، حَدَّثَنَا أَبِي، حَدَّثَنَا زَكَرِيَّاءُ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ، قَالَ سَمِعْتُهُ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ، وَأَهْوَى النُّعْمَانُ بِإِصْبَعَيْهِ إِلَى أُذُنَيْهِ: «إِنَّ الْحَلاَلَ بَيِّنٌ وَإِنَّ الْحَرَامَ بَيِّنٌ. وَبَيْنَهُمَا مُشْتَبِهَاتٌ، لاَ

يَعْلَمُهُنَّ كَثِيرٌ مِنَ النَّاسِ. فَمَنِ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعِرْضِهِ، وَمَنْ وَقَعَ فِي الشُّبُهَاتِ وَقَعَ فِي الْحَرَامِ. كَالرَّاعِي يَرْعَى حَوْلَ الْحِمَى، يُوشِكُ أَنْ يَرْتَعَ فِيهِ. أَلا وَإِنَّ لِكُلِّ مَلِكٍ حِمًى. أَلا وَإِنَّ حِمَى اللهِ مَحَارِمُهُ. أَلا وَإِنَّ فِي الْجَسَدِ مُضْغَةً، إِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهُ وَإِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهُ. أَلا وَهِيَ الْقَلْبُ».

Abu Bakr ibn Abi Shaybah narrated: Wakīʿ narrated [H]. Also, Isḥāq ibn Ibrāhīm narrated; ʿĪsā ibn Yūnus reported; both said: Zakariyyā' narrated; with the same chain of transmission: **the same text.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكِيعٌ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، قَالا: حَدَّثَنَا زَكَرِيَّاءُ، بِهَذَا الإِسْنَادِ مِثْلَهُ.

Isḥāq ibn Ibrāhīm narrated: Jarīr reported; from Muṭarrif and Abu Farwah al-Hamdānī [H]. Also, Qutaybah ibn Saʿīd narrated; Yaʿqūb (meaning Ibn ʿAbd al-Raḥmān al-Qāriy) narrated; from Ibn ʿAjlān; from ʿAbd al-Raḥmān ibn Saʿīd; all of them from al-Shaʿbī; from al-Nuʿmān ibn Bashīr; from the Prophet; **the same text, but Zakariyyā's narration is longer and more complete.**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا جَرِيرٌ، عَنْ مُطَرِّفٍ، وَأَبِي فَرْوَةَ الْهَمْدَانِيِّ ح. وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا يَعْقُوبُ (يَعْنِي ابْنَ عَبْدِ الرَّحْمَنِ الْقَارِيَّ)، عَنِ ابْنِ عَجْلاَنَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَعِيدٍ، كُلُّهُمْ عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِهَذَا الْحَدِيثِ. غَيْرَ أَنَّ حَدِيثَ زَكَرِيَّاءَ أَتَمُّ مِنْ حَدِيثِهِمْ وَأَكْثَرُ.

[3585–108]. (Dar al-Salam 3885) ʿAbd al-Malik ibn Shuʿayb ibn al-Layth ibn Saʿd narrated: my father narrated to me; from my

grandfather; Khālid ibn Yazīd narrated to me; Saʿīd ibn Abi Hilāl narrated to me; from ʿAwn ibn ʿAbdullāh; from ʿĀmir al-Shaʿbī; that he heard Nuʿmān ibn Bashīr ibn Saʿd, the Prophet's Companion, addressing the people at Humṣ. He said: **'I heard God's Messenger (peace be upon him) say: 'What is lawful is plain and what is unlawful is plain…".'**

He adds the same as the narration by Zakariyyā' from al-Shaʿbī, up to **'all but grazing therein'.**

حَدَّثَنَا عَبْدُ الْـمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ، حَدَّثَنِي أَبِي، عَنْ جَدِّي، حَدَّثَنِي خَالِدُ بْنُ يَزِيدَ، حَدَّثَنِي سَعِيدُ بْنُ أَبِي هِلاَلٍ، عَنْ عَوْنِ بْنِ عَبْدِ اللهِ، عَنْ عَامِرٍ الشَّعْبِيِّ، أَنَّهُ سَمِعَ نُعْمَانَ بْنَ بَشِيرِ بْنِ سَعْدٍ، صَاحِبَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَهُوَ يَخْطُبُ النَّاسَ بِحِمْصَ، وَهُوَ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «الْحَلاَلُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ».

فَذَكَرَ بِمِثْلِ حَدِيثِ زَكَرِيَّاءَ عَنِ الشَّعْبِيِّ إِلَى قَوْلِهِ: «يُوشِكُ أَنْ يَقَعَ فِيهِ».

Text Explanation

This hadith is considered one of the most important hadiths of the Prophet, as it includes many greatly important points. It is one of the hadiths that sum up the religion of Islam. Some scholars say that it constitutes one-third of Islam, and that Islam is based on three hadiths: 1) This one, No. 3584, 2) The hadith which begins with: 'Actions are but by intention and everyone shall have but what one has intended, etc.' and 3) The hadith that says: 'Part of one's being a good Muslim is that he takes no interest in what does not concern him'. Abu Dāwūd al-Sijistānī said: Islam is based on four hadiths: these three and the hadith that says: 'None of you truly believes until he

wishes for his brother what he wishes for himself'. Some scholars add the hadith that says: 'Attach little importance to this world and God will love you; and care nothing for what people desire and people will love you'.

Scholars explained the great importance of this hadith. They say that it highlights the need to stick to what is lawful, with regards to what one eats, drinks, wears and does. One must steer away from what is forbidden in all areas. The hadith also warns against going into what is doubtful, stating this very clearly and giving the example of getting too close to a sanctuary. It concludes with the most important point which is the need to ensure that one's heart is sound. The Prophet states that if one's heart is whole and free of disease the whole body is sound and healthy, while disease of the heart means the whole body is diseased.

The hadith begins with: 'What is lawful is plain and what is unlawful is plain'. This means that things are grouped into three categories: the first category includes what is clearly lawful and permissible, such as bread, fruits, oil, honey, and also the milk and eggs of animals that are permissible to eat, and similar types of food. This category also includes clearly lawful behaviour such as speaking, looking, walking and other actions. The second category includes what is plainly unlawful, such as drinking wine, urine or blood and eating pig meat or carrion. Likewise, adultery, lying, backbiting and lustful gazing at the opposite sex are clearly unlawful practices. The third category includes matters that are neither clearly lawful nor clearly unlawful. Therefore, many people do not know these or the rulings attached to them. Religious scholars know the rulings of such matters, either on the basis of text, or analogy, or some other basis. If something remains uncertain whether permissible or prohibited, and neither a religious text nor scholars unanimity applies to it, a scholar who is competent to deduce a ruling through reasoning will give it a ruling on the basis of acceptable evidence. If his verdict is that it is permissible, then it is. However, the evidence may not be clear cut, and it would be safer to refrain from that

thing because it comes under what the Prophet says: ‘Whoever avoids doubtful matters clears himself in regard to his religion and his honour’.

If a mujtahid scholar cannot determine a ruling regarding something, is this considered permissible, forbidden or unknown? There are three rulings mentioned by *Qadi* ʿIyāḍ and other scholars. It appears that these three rulings are based on the different views regarding the status of things before a religious ruling is given on them. There are four different views in the case, the first and most correct is that no ruling of permissibility, prohibition or otherwise is given, because a ruling requires implementation by people. According to the people of the truth, no requirement can be established except through religious law. The second view rules that such matters are forbidden, while the third view rules their permissibility. The fourth view gives no ruling, but God knows best. The Prophet says that a person who avoids doubtful matters ‘clears himself in regard to his religion and his honour’. This means that he is clear of legitimate criticism regarding his faith, and he protects his own and his family honour from what other people may say.

In this hadith, the Prophet (peace be upon him) says: ‘For certain, every king has a sanctuary, and for certain God’s sanctuary is His prohibitions’. This refers to the practice of kings and rulers. Every king has his own private domain which he keeps for himself and does not allow others to enter. Whoever trespasses into a king’s private domain is punished by that king. To avoid such punishment, one has to take precautions not to trespass. God has His own sanctuary marked out by the sinful practices He has forbidden such as murder, adultery, theft, false accusation of others, drinking intoxicants, lying, backbiting, taking other people’s property by false claims, etc. All these are part of God’s sanctuary. Anyone who delves into it through committing any sin incurs a punishment, and whoever gets close to it exposes himself to falling into it. It is wise, therefore, to take the necessary measures to stay away from it and not to do what brings oneself close to sin. This is ensured by steering away from doubtful matters.

The hadith is concluded with the following statement by the Prophet: ‘Indeed, there is in the body a morsel of flesh which, if it be whole, all the body is whole, and which, if it be diseased, all the body is diseased. Indeed, it is the heart’. The heart is described as a ‘morsel of flesh’ to indicate its being very small in comparison with the body, although the soundness or sickness of the body are in consequence of the soundness or sickness of the heart. The hadith urges serious action to ensure that one’s heart remains whole and sound, protecting it from corruption.

The wording of this hadith is taken as evidence confirming that the mind is in the heart, not in the head. There is well known controversy on this point. Scholars of our Shāfiʿī School and the majority of theologians say that it is in the heart. Abu Ḥanīfah says it is in the brain and it may be said that it is in the head. The first view is also attributed to philosophers and the second to medical doctors. Imam al-Māzarī said:

> Those who say that the mind is in the heart cite in support the Qur’anic verses: ‘Have they never journeyed through the lands, letting their hearts gain wisdom’? (22: 46) ‘In this there is a reminder for everyone who has an alert heart’. (50: 37). They also cite the present hadith which makes the soundness of the body dependent on the soundness of the heart. As the brain is part of the body, its soundness is dependent on the heart. Hence, it cannot be the place of the mind. Scholars who say that the mind is in the brain argue that if the brain degenerates, the mind also degenerates. They claim that epilepsy is a form of brain disease, but they have no argument in support of their view, because God has made the degeneration of the mind a consequence of the degeneration of the brain, although the mind is not in the brain, and there is nothing to preclude this, particularly because they mention that there is a link between the brain and the heart. They also claim that there is a connection between the top of the stomach and the brain, but God knows best.[ii]

The Prophet says in this hadith: ‘The one who slips into the doubtful will fall into what is unlawful’. This is interpreted in two ways. The first is that because such a person gets into doubtful matters, time after time, he will fall into what is unlawful, even without intending it. He may incur a sin as a result of failing to take the necessary precautions. The other interpretation is that complacency becomes habitual to this person, leading him to be involved in something doubtful, then in a more serious one, and so on. Ultimately he will deliberately fall into what is unlawful. This is akin to what early scholars said: ‘Sinful practices are the way leading to disbelief’. May God protect us.

Transmission

This hadith, No. 3584, is narrated by al-Nuʿmān ibn Bashīr, a Companion of the Prophet. Its chain of transmission quotes him saying: ‘I heard God’s Messenger (peace be upon him) say; and al-Nuʿmān pointed with his two fingers to his ears’. This is a clear statement that al-Nuʿmān heard directly from the Prophet (peace be upon him). This is right and it is stated by Iraqi scholars and the great majority of other scholars. *Qadi* ʿIyāḍ said that Yaḥyā ibn Maʿīn mentioned that scholars of Madinah do not confirm that al-Nuʿmān heard hadiths from the Prophet. But this is a weak or false report and God knows best.

i. Related by al-Bukhari, 52 and 2051; Abu Dāwūd in a similar version, 3329 and 3330; al-Tirmidhī, 1205; al-Nasā’ī, 4465 and 5726; Ibn Mājah, 3984.

ii. It should be remembered that Imam al-Māzarī lived in the twelfth century. He died in 1141 CE. These notions about the mind and the heart were common at the time. Imam al-Nawawī died in 1277 CE.

CHAPTER 21

SELLING A CAMEL WITH A CONDITION TO RIDE IT

[3586–109]. (Dar al-Salam 3886–3887) Muhammad ibn ʿAbdullāh ibn Numayr narrated:[i] my father narrated; Zakariyyā' narrated; from ʿĀmir; Jābir ibn ʿAbdullāh narrated to me; that he was riding a camel which was exhausted. He wanted to leave it loose. He said: **'The Prophet (peace be upon him) caught up with me, said a prayer for me and poked the camel. It travelled as it had never travelled before. [The Prophet] said: "Sell it to me for an *ouqiyyah*". I said: "No". He then said: "Sell it to me". I sold it to him for an *ouqiyyah*, but stipulated that I could continue to ride it home. Once I arrived, I took the camel to him. He gave me its price, and I went back home. He sent someone to call me back. He said: "Did you think that I bargained with you to take your camel? Take your camel and your money; it is yours".'**

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا زَكَرِيَّاءُ، عَنْ عَامِرٍ، حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللهِ، أَنَّهُ كَانَ يَسِيرُ عَلَى جَمَلٍ لَهُ قَدْ أَعْيَا، فَأَرَادَ أَنْ يُسَيِّبَهُ. قَالَ: فَلَحِقَنِي النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَدَعَا لِي. وَضَرَبَهُ فَسَارَ سَيْرًا لَمْ يَسِرْ مِثْلَهُ. قَالَ: «بِعْنِيهِ بِوُقِيَّةٍ». قُلْتُ لا. ثُمَّ قَالَ: «بِعْنِيهِ». فَبِعْتُهُ بِوُقِيَّةٍ. وَاسْتَثْنَيْتُ عَلَيْهِ حُمْلاَنَهُ إِلَى أَهْلِي. فَلَمَّا بَلَغْتُ أَتَيْتُهُ بِالْجَمَلِ،

فَنَقَدَنِي ثَمَنَهُ ثُمَّ رَجَعْتُ. فَأَرْسَلَ فِي أَثَرِي، فَقَالَ: «أَتُرَانِي مَاكَسْتُكَ لآخُذَ جَمَلَكَ؟ خُذْ جَمَلَكَ وَدَرَاهِمَكَ، فَهُوَ لَكَ».

ʿAlī ibn Khashram narrated: ʿĪsā (meaning Ibn Yūnus) reported; from Zakariyyā'; from ʿĀmir; Jābir ibn ʿAbdullāh narrated to me: **the same text as Ibn Numayr's narration.**

وَحَدَّثَنَاهُ عَلِيُّ بْنُ خَشْرَمٍ، أَخْبَرَنَا عِيسَى (يَعْنِي ابْنَ يُونُسَ)، عَنْ زَكَرِيَّاءَ، عَنْ عَامِرٍ، حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللهِ، بِمِثْلِ حَدِيثِ ابْنِ نُمَيْرٍ.

[3587–110]. (Dar al-Salam 3888) ʿUthmān ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated (ʿUthmān's text): Jarīr (Isḥāq said: 'reported' and ʿUthmān said: 'narrated'); from Mughīrah; from al-Shaʿbī; from Jābir ibn ʿAbdullāh. He said: **'I went on a military expedition with God's Messenger. [On the way back], the Prophet caught up with me as I was riding a camel that we used to carry water. My camel was so tired that it could hardly walk. The Prophet asked me: "What is wrong with your camel?" I said: "It is very tired?" God's Messenger dropped back a little, urged the camel and prayed for it. Soon it was moving fast, ahead of other camels. The Prophet asked me: "How do you see your camel?" I said: "It is fine, benefitting by your blessing". He said: "Will you sell it to me?" I felt shy because we had no other camel, and I said: "Yes". He said: "Then sell it to me". I sold him the camel on condition that I would continue to ride it until I arrived in Madinah.**

I said: "Messenger of God, I have just got married." I requested his permission and he granted it. Therefore, I

travelled ahead of people until I reached Madinah. My maternal uncle met me [as I arrived] and he asked me about the camel. I told him what had happened and he blamed me [for selling it]. When I asked the Prophet's permission, he asked me: "Have you married a virgin or a mature woman?" I said: "I have married a mature woman". He said: "Should you not have married a virgin so that you can play with her and she plays with you?" I said: "Messenger of God, my father passed away – or was a martyr – and he left me young sisters. I did not wish to marry one of a similar age to them because she would not be able to teach them good manners or look after them. I therefore married a mature woman so that she could look after them and educate them in good manners". When God's Messenger arrived in Madinah, I took the camel to him, but he gave me its price and returned the camel to me'.

حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لِعُثْمَانَ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ عُثْمَانُ حَدَّثَنَا) جَرِيرٌ، عَنْ مُغِيرَةَ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، قَالَ: غَزَوْتُ مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَتَلاَحَقَ بِي. وَتَحْتِي نَاضِحٌ لِي قَدْ أَعْيَا، وَلاَ يَكَادُ يَسِيرُ. قَالَ: فَقَالَ لِي: «مَا لِبَعِيرِكَ»؟ قَالَ: قُلْتُ عَلِيلٌ. قَالَ: فَتَخَلَّفَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَزَجَرَهُ وَدَعَا لَهُ. فَمَازَالَ بَيْنَ يَدَيِ الإِبِلِ قُدَّامَهَا يَسِيرُ. قَالَ: فَقَالَ لِي: «كَيْفَ تَرَى بَعِيرَكَ»؟ قَالَ: قُلْتُ بِخَيْرٍ. قَدْ أَصَابَتْهُ بَرَكَتُكَ. قَالَ: «أَفَتَبِيعُنِيهِ»؟ فَاسْتَحْيَيْتُ، وَلَمْ يَكُنْ لَنَا نَاضِحٌ غَيْرُهُ. قَالَ: فَقُلْتُ نَعَمْ. فَبِعْتُهُ إِيَّاهُ عَلَى أَنَّ لِي فَقَارَ ظَهْرِهِ حَتَّى أَبْلُغَ الْـمَدِينَةَ.

قَالَ: فَقُلْتُ لَهُ يَا رَسُولَ اللهِ إِنِّي عَرُوسٌ. فَاسْتَأْذَنْتُهُ فَأَذِنَ لِي. فَتَقَدَّمْتُ النَّاسَ إِلَى الْـمَدِينَةِ، حَتَّى انْتَهَيْتُ، فَلَقِيَنِي خَالِي، فَسَأَلَنِي عَنِ الْبَعِيرِ، فَأَخْبَرْتُهُ بِمَا صَنَعْتُ فِيهِ. فَلاَمَنِي فِيهِ. قَالَ:

وَقَدْ كَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ لِي حِينَ اسْتَأْذَنْتُهُ: «مَا تَزَوَّجْتَ، أَبِكْرًا أَمْ ثَيِّبًا»؟ فَقُلْتُ لَهُ: تَزَوَّجْتُ ثَيِّبًا. قَالَ: «أَفَلاَ تَزَوَّجْتَ بِكْرًا تُلاَعِبُكَ وَتُلاَعِبُهَا»؟ فَقُلْتُ لَهُ: يَا رَسُولَ اللهِ تُوُفِّيَ وَالِدِي– أَوِ اسْتُشْهِدَ – وَلِي أَخَوَاتٌ صِغَارٌ. فَكَرِهْتُ أَنْ أَتَزَوَّجَ إِلَيْهِنَّ مِثْلَهُنَّ، فَلاَ تُؤَدِّبُهُنَّ، وَلاَ تَقُومُ عَلَيْهِنَّ. فَتَزَوَّجْتُ ثَيِّبًا لِتَقُومَ عَلَيْهِنَّ وَتُؤَدِّبَهُنَّ. قَالَ: فَلَمَّا قَدِمَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الْـمَدِينَةَ غَدَوْتُ إِلَيْهِ بِالْبَعِيرِ، فَأَعْطَانِي ثَمَنَهُ وَرَدَّهُ عَلَيَّ.

[3588–111]. (Dar al-Salam 3889) ʿUthmān ibn Abi Shaybah narrated:[ii] Jarīr narrated; from al-Aʿmash; from Sālim ibn Abi al-Jaʿd; from Jābir. He said: **‘We travelled with God’s Messenger (peace be upon him) from Makkah to Madinah, and my camel was poorly…’ He narrated the hadith in detail, mentioning: ‘He said to me: “Sell me this camel of yours”. I said: “No; it is yours”. He said: “No, but sell it to me”. I said: “No; it is yours, Messenger of God”. He said: “No, sell it to me”. I said: “I owe someone an *ouqiyyah* of gold; it is yours for that price”. He said: “I buy it; continue to ride it to Madinah”. When I arrived in Madinah, the Prophet said to Bilāl: “Give him an *ouqiyyah* of gold and add some more”. He gave me an *ouqiyyah* of gold and added a *qīrāṭ*. I said: “I shall never part with this addition by God’s Messenger (peace be upon him)”. I kept it in a bag of mine, but the people of Syria took it away at the time of al-Ḥarrah’.**

حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا جَرِيرٌ، عَنِ الأَعْمَشِ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ جَابِرٍ، قَالَ: أَقْبَلْنَا مِنْ مَكَّةَ إِلَى الْـمَدِينَةِ مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَاعْتَلَّ جَمَلِي. وَسَاقَ الْحَدِيثَ بِقِصَّتِهِ، وَفِيهِ ثُمَّ قَالَ لِي: «بِعْنِي جَمَلَكَ هَذَا». قَالَ: قُلْتُ لا، بَلْ هُوَ لَكَ. قَالَ:

«لا، بَلْ بِعْنِيهِ». قَالَ: قُلْتُ لا، بَلْ هُوَ لَكَ يَا رَسُولَ اللهِ. قَالَ: «لا، بَلْ بِعْنِيهِ». قَالَ: قُلْتُ فَإِنَّ لِرَجُلٍ عَلَيَّ أُوقِيَّةَ ذَهَبٍ، فَهُوَ لَكَ بِهَا. قَالَ: «قَدْ أَخَذْتُهُ، فَتَبَلَّغْ عَلَيْهِ إِلَى الْـمَدِينَةِ». قَالَ: فَلَمَّا قَدِمْتُ الْـمَدِينَةَ قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لِبِلاَلٍ: «أَعْطِهِ أُوقِيَّةً مِنْ ذَهَبٍ، وَزِدْهُ». قَالَ: فَأَعْطَانِي أُوقِيَّةً مِنْ ذَهَبٍ، وَزَادَنِي قِيرَاطًا. قَالَ: فَقُلْتُ لاَ تُفَارِقُنِي زِيَادَةُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. قَالَ: فَكَانَ فِي كِيسٍ لِي، فَأَخَذَهُ أَهْلُ الشَّامِ يَوْمَ الْحَرَّةِ.

[3589–112]. (Dar al-Salam 3890) Abu Kāmil al-Jaḥdarī narrated: ʿAbd al-Wāḥid ibn Ziyād narrated; al-Jurayrī narrated; from Abu Naḍrah; from Jābir ibn ʿAbdullāh. He said: **‘We were with God’s Messenger (peace be upon him) on a journey when my camel dropped back…’ He narrated the hadith, and said: ‘God’s Messenger (peace be upon him) poked him then said to me: “Ride, by God’s name”. He also added: “He continued to increase and say: ‘And may God forgive you’”.’**

حَدَّثَنَا أَبُو كَامِلٍ الْجَحْدَرِيُّ، حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ، حَدَّثَنَا الْجُرَيْرِيُّ، عَنْ أَبِي نَضْرَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، قَالَ: كُنَّا مَعَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي سَفَرٍ، فَتَخَلَّفَ نَاضِحِي. وَسَاقَ الْحَدِيثَ، وَقَالَ فِيهِ: فَنَخَسَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، ثُمَّ قَالَ لِي: «ارْكَبْ بِاسْمِ اللهِ». وَزَادَ أَيْضًا قَالَ: فَمَا زَالَ يَزِيدُنِي وَيَقُولُ: «وَاللهُ يَغْفِرُ لَكَ».

[3590–113]. (Dar al-Salam 3891) Abu al-Rabīʿ al-ʿAtakī narrated to me: Ḥammād narrated; Ayyūb narrated; from Abu al-Zubayr; from Jābir. He said: **‘When the Prophet (peace be upon him) joined me when my camel was very weak, he poked the camel and it sprang. After that, I would hold its reign tight so that I could hear what he said, and I found it hard. The Prophet**

caught up with me and said: “Sell it to me”. I sold it to him for five *ouqiyyahs*. I said: “But I may continue to ride it to Madinah”. He said: “And you may ride it to Madinah”. When I arrived in Madinah, I took it to him. He gave me one *ouqiyyah* extra, then gifted the camel to me.’

وَحَدَّثَنِي أَبُو الرَّبِيعِ الْعَتَكِيُّ، حَدَّثَنَا حَمَّادٌ، حَدَّثَنَا أَيُّوبُ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، قَالَ: لَمَّا أَتَى عَلَيَّ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَقَدْ أَعْيَا بَعِيرِي قَالَ: فَنَخَسَهُ فَوَثَبَ. فَكُنْتُ بَعْدَ ذَلِكَ أَحْبِسُ خِطَامَهُ، لأَسْمَعَ حَدِيثَهُ، فَمَا أَقْدِرُ عَلَيْهِ. فَلَحِقَنِي النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «بِعْنِيهِ». فَبِعْتُهُ مِنْهُ بِخَمْسِ أَوَاقٍ. قَالَ: قُلْتُ عَلَى أَنَّ لِي ظَهْرَهُ إِلَى الْـمَدِينَةِ. قَالَ: «وَلَكَ ظَهْرُهُ إِلَى الْـمَدِينَةِ». قَالَ: فَلَمَّا قَدِمْتُ الْـمَدِينَةَ أَتَيْتُهُ بِهِ، فَزَادَنِي وُقِيَّةً، ثُمَّ وَهَبَهُ لِي.

[3591–114]. (Dar al-Salam 3892) ʿUqbah ibn Mukram al-ʿAmmiy narrated:[iii] Yaʿqūb ibn Isḥāq narrated; Bashīr ibn ʿUqbah narrated; from Abu al-Mutawakkil al-Nājī; from Jābir ibn ʿAbdullāh. He said: **‘I travelled with God’s Messenger (peace be upon him) on one of his journeys (I think he said: for jihad)…’ he narrated the hadith and added: ‘He said: “Jābir, have you received the price?” I said: “Yes”. He said: “The price is yours and the camel is yours. The price is yours and the camel is yours”.’**

حَدَّثَنَا عُقْبَةُ بْنُ مُكْرَمٍ الْعَمِّيُّ، حَدَّثَنَا يَعْقُوبُ بْنُ إِسْحَاقَ، حَدَّثَنَا بَشِيرُ بْنُ عُقْبَةَ، عَنْ أَبِي الْـمُتَوَكِّلِ النَّاجِيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، قَالَ: سَافَرْتُ مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي بَعْضِ أَسْفَارِهِ ـ أَظُنُّهُ قَالَ غَازِيًا. وَاقْتَصَّ الْحَدِيثَ، وَزَادَ فِيهِ قَالَ: «يَا جَابِرُ أَتَوَفَّيْتَ الثَّمَنَ»؟ قُلْتُ: نَعَمْ. قَالَ: «لَكَ الثَّمَنُ وَلَكَ الْجَمَلُ. لَكَ الثَّمَنُ وَلَكَ الْجَمَلُ».

[3592–115]. (Dar al-Salam 3893) ʿUbaydullāh ibn Muʿādh al-ʿAnbarī narrated: my father narrated; Shuʿbah narrated; from Muḥārib; that he heard Jābir ibn ʿAbdullāh say: **‘God’s Messenger (peace be upon him) bought a camel from me for two *ouqiyyahs* and one or two dirhams. When he arrived at Ṣirār, he ordered a cow to be slaughtered and they ate of it. When he arrived in Madinah, he told me to come to the mosque and offer a prayer of two *rakʿahs*. He weighed the price of the camel for me, giving me more [than the agreed price]’.**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ، عَنْ مُحَارِبٍ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: اشْتَرَى مِنِّي رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَعِيرًا بِوُقِيَّتَيْنِ وَدِرْهَمٍ أَوْ دِرْهَمَيْنِ. قَالَ: فَلَمَّا قَدِمَ صِرَارًا، أَمَرَ بِبَقَرَةٍ فَذُبِحَتْ، فَأَكَلُوا مِنْهَا. فَلَمَّا قَدِمَ الْمَدِينَةَ أَمَرَنِي أَنْ آتِيَ الْمَسْجِدَ فَأُصَلِّيَ رَكْعَتَيْنِ، وَوَزَنَ لِي ثَمَنَ الْبَعِيرِ، فَأَرْجَحَ لِي.

[3593–116]. (Dar al-Salam 3894) Yaḥyā ibn Ḥabīb al-Ḥārithī narrated to me: Khālid ibn al-Ḥārith narrated; Shuʿbah narrated; Muḥārib reported; from Jābir; from the Prophet (peace be upon him): the same story, except that he said: **‘He bought it from me for a price he mentioned’, but did not mention the two *ouqiyyahs* and the dirham and two. He said: ‘He ordered a cow to be slaughtered and distributed its meat’.**

حَدَّثَنِي يَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ، حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ، حَدَّثَنَا شُعْبَةُ، أَخْبَرَنَا مُحَارِبٌ، عَنْ جَابِرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، بِهَذِهِ الْقِصَّةِ. غَيْرَ أَنَّهُ قَالَ: فَاشْتَرَاهُ مِنِّي بِثَمَنٍ قَدْ سَمَّاهُ. وَلَمْ يَذْكُرِ الْوُقِيَّتَيْنِ وَالدِّرْهَمَ وَالدِّرْهَمَيْنِ. وَقَالَ: أَمَرَ بِبَقَرَةٍ فَنُحِرَتْ، ثُمَّ قَسَمَ لَحْمَهَا.

[3594–117]. (Dar al-Salam 3895) Abu Bakr ibn Abi Shaybah narrated:[iv] Ibn Abi Zā'idah narrated; from Ibn Jurayj; from ʿAṭā'; from Jābir; that the Prophet (peace be upon him) said to him: **'I buy your camel for four dīnārs and you may ride it up to Madinah'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا ابْنُ أَبِي زَائِدَةَ، عَنِ ابْنِ جُرَيْجٍ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ لَهُ: «قَدْ أَخَذْتُ جَمَلَكَ بِأَرْبَعَةِ دَنَانِيرَ، وَلَكَ ظَهْرُهُ إِلَى الْمَدِينَةِ».

Text Explanation

This chapter gives several versions of a hadith concerning Jābir. It is a well-known hadith which Ahmad and other scholars cite as evidence for the permissibility of selling a mount and stipulating a condition to continue to ride it. Mālik said that such a condition is permissible if the distance is short. He understands the hadith on this basis. Al-Shāfiʿī, Abu Ḥanīfah and others say that stipulating such a condition is not permissible whether the distance is short or long and so the sale is not valid. They cite in evidence the hadith prohibiting a sale stipulating an exception, which is hadith No. 3428, and another hadith prohibiting a sale with a condition. They explain the hadith concerning Jābir saying that it is a case that involves different possibilities. They add that the Prophet indeed wanted to give Jābir the price of the camel without intending the sale in reality. They also said that perhaps the condition was not made as part of the sale agreement. A condition invalidates the sale if it is part of the agreement. Perhaps in Jābir's case, the condition preceded the agreement and as such it was ineffective. Then the Prophet offered Jābir the opportunity to ride the camel.

The hadith mentions that the Prophet asked Jābir to sell him the camel. This shows that it is permissible to request an owner to sell something he owns, without him offering it for sale. The price given for Jābir's camel is stated differently in these hadiths: it is variously mentioned as one gold *ouqiyyah*, five *ouqiyyahs* with one extra, two *ouqiyyahs* with one or two dirhams, and also four dīnārs. Al-Bukhari mentions the difference of the price in different versions of the hadith, adding eight hundred dirhams, twenty dīnārs and 'probably four *ouqiyyahs*'. *Qadi* ʿIyāḍ mentions that al-Dāwūdī said that the value of the gold *ouqiyyah* is well known, while the silver one is forty dirhams. The reason for these differences is that the narrators intended the meaning, which is permissible. The price of the camel was a gold *ouqiyyah*, and this is what should be understood from the narrations that do not specify its kind. The version that mentions five *ouqiyyahs* refers to silver *ouqiyyahs* which was at the time equal in value to a gold *ouqiyyah*. Thus, the sale agreement mentions the agreed price in gold and the silver *ouqiyyahs* refer to the actual settlement of the price. It is also possible that all this was extra to the one *ouqiyyah*, as Jābir says in hadith No. 3589: 'He continued to increase'. The version that mentions four dīnārs is also consistent, because it is possible that the gold *ouqiyyah* at the time weighed four dīnārs. The hadith that mentions two *ouqiyyahs* may mean that one was the sale price and the other given as extra, as Jābir mentions that the Prophet gave him an *ouqiyyah* extra. The mention of 'one or two dirhams' agrees with what hadith No. 3588 states that Bilāl gave Jābir one *qīrāṭ* extra. The report mentioning twenty dīnārs is understood to refer to small dīnārs which they used, while the report of four *ouqiyyahs* is doubted by the narrator, and cannot be considered, but God knows best.[v]

In hadith No. 3588, Jābir says to the Prophet that he owes someone a gold *ouqiyyah* and the same would be the price of the camel. The Prophet said that he would take the camel at that price. Our scholars may take this as evidence that it is necessary to express commitment and acceptance in sales, and that a sale agreement requires these. They claim that a sale cannot

be concluded by exchanging what is being sold and its price. The more correct view is that it is concluded, provided that the exchange is completed With the buyer taking the merchandise and giving the price. If either or both of these are not present at the time, the sale must be verbally made by a commitment by the seller and acceptance by the buyer. This proves that a sale is complete when the wording is general, rather than specific. The Prophet said to Jābir: "I take it at this [price]" and Jābir said to him: "It is yours".' Both expressions are rather general.

In the same hadith, No. 3588, the Prophet said to Bilāl to give Jābir an *ouqiyyah* and some more. This shows that it is permissible to request someone to repay one's debt on one's behalf, and also to give people what is due to them. It also makes clear that it is recommended to give more than what one owes and to give a little more when weighing what is due to a client or a customer.

The hadith mentions that Jābir kept the increase given to him by the Prophet and he had it in a little bag with him, but it was taken from him by 'the people of Syria at the time of al-Ḥarrah'. This was in Year 63 AH, 683 CE.

Hadith No. 3592 mentions: 'When he arrived at Ṣirār, he ordered a cow to be slaughtered and they ate of it. When he arrived in Madinah, he told me to come to the mosque and offer a prayer of two *rakʿahs*'. Ṣirār is a place close to Madinah. Al-Khaṭṭābī said that it is an old well on the Iraq road, at a distance of three miles from Madinah. *Qadi* ʿIyāḍ said that it is more likely to be the name of a place, rather than a well. The Prophet ordered Jābir to offer two *rakʿahs* at the mosque in Madinah, which shows that voluntary prayers offered during the day should be in the form of two *rakʿahs* at a time, in the same way as voluntary night worship.

This hadith stating the case of Jābir and his camel, in its different versions, includes many very interesting points which can be summarised into the following points:

1. The miraculous change of the camel's condition, which was in a state of total fatigue but came up strong and running after the Prophet's supplication;
2. It is permissible to request to buy something from its owner, even though he is not currently offering it for sale;
3. It is permissible to try and get a bargain about the price, trying to reduce it;
4. It is commendable that the chief of a community should enquire after people in his community and give them suitable advice;
5. It is preferable to marry a woman who is a virgin;
6. Play between man and wife is desirable;
7. It is to Jābir's great merit that he preferred to marry a mature woman who could look after his sisters, rather than seeking his own personal pleasure;
8. It is recommended when arriving home after a journey to start by offering two *rakʿahs* at the mosque;
9. It is recommended to point out what is of benefit;
10. It is desirable and recommended to give a little extra when giving in weight;
11. If the price is given in a currency that needs to be weighed, the cost of its weighing is born by the seller;
12. Things which belonged to devout people may be kept as a blessing, as Jābir kept the extra given to him by the Prophet;
13. It is permissible for some soldiers returning home to move in advance of the main force, after obtaining the commander's permission;
14. It is permissible to fulfil one's duties through a deputy.

The hadith includes other points of interest which we have already stated in our commentary.

Transmission

The chain of transmission of hadith No. 3592 includes the narrators ʿUqbah ibn Mukram al-ʿAmmiy and Abu al-Mutawakkil al-Nājī. ʿUqbah is called al-ʿAmmiy because he belonged to the al-ʿAmm clan of the Tamīm tribe.

Abu al-Mutawakkil is called al-Nājī because he belonged to the Najiyah clan. Najiyah is the name who was married to Usāmah ibn Lu'ay.

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i. Related by al-Bukhari, 2718, 2967 and in a shorter version, 2385; Abu Dāwūd in a shorter version, 3505; al-Tirmidhī in a shorter version, 1253; al-Nasā'ī, 4651 and 4652.

ii. Related by al-Bukhari, 2718; al-Nasā'ī, 4653.

iii. Related by al-Bukhari, 2470 and in a longer version, 2861.

iv. Related by al-Bukhari in a longer version, 2309.

v. Dr Lasheen, who wrote an extensive commentary on Muslim's *Ṣaḥīḥ*, says of these explanations that try to make these different figures tally: 'Some of these explanations are unacceptable, while others are unfounded. It is better to relate some to what is accurately reported and to say that others are odd, particularly because the actual price paid for Jābir's camel has no bearing on any religious ruling'.

CHAPTER 22

THE BEST IN DEBT REPAYMENT

[3595–118]. (Dar al-Salam 3896) Abu al-Ṭāhir Ahmad ibn ʿAmr ibn Sarḥ narrated:[i] Ibn Wahb reported; from Mālik ibn Anas; from Zayd ibn Aslam; from ʿAṭā’ ibn Yasār; from Abu Rāfiʿ; that **‘God’s Messenger (peace be upon him) borrowed from someone a young camel. He was later brought some camels given as zakat. He ordered Abu Rāfiʿ to give the man a young camel in repayment. Abu Rāfiʿ came back to him and said: “I cannot find in them any camel less than six year old”. The Prophet said: “Give one to him; the best of people are the best in repayment”.’**

حَدَّثَنَا أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ، أَخْبَرَنَا ابْنُ وَهْبٍ، عَنْ مَالِكِ بْنِ أَنَسٍ، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ أَبِي رَافِعٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ اسْتَسْلَفَ مِنْ رَجُلٍ بَكْرًا، فَقَدِمَتْ عَلَيْهِ إِبِلٌ مِنْ إِبِلِ الصَّدَقَةِ، فَأَمَرَ أَبَا رَافِعٍ أَنْ يَقْضِيَ الرَّجُلَ بَكْرَهُ. فَرَجَعَ إِلَيْهِ أَبُو رَافِعٍ فَقَالَ: لَمْ أَجِدْ فِيهَا إِلاَّ خِيَارًا رَبَاعِيًا. فَقَالَ: «أَعْطِهِ إِيَّاهُ. إِنَّ خِيَارَ النَّاسِ أَحْسَنُهُمْ قَضَاءً».

[3596–119]. (Dar al-Salam 3897) Abu Kurayb narrated: Khālid ibn Makhlad narrated; from Muhammad ibn Jaʿfar; I heard Zayd ibn Aslam; ʿAṭā’ ibn Yasār reported; from Abu Rāfiʿ, God’s Messenger’s *mawlā*. He said: **‘God’s Messenger (peace be upon**

him) borrowed a young camel…’ the same text, except that he said: ‘the best of God’s servants are the best in repayment’.

حَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا خَالِدُ بْنُ مَخْلَدٍ، عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ، سَمِعْتُ زَيْدَ بْنَ أَسْلَمَ، أَخْبَرَنَا عَطَاءُ بْنُ يَسَارٍ، عَنْ أَبِي رَافِعٍ مَوْلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: اسْتَسْلَفَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَكْرًا: بِمِثْلِهِ. غَيْرَ أَنَّهُ قَالَ: «فَإِنَّ خَيْرَ عِبَادِ اللهِ أَحْسَنُهُمْ قَضَاءً».

[3597–120]. (Dar al-Salam 3898) Muhammad ibn Bashshār ibn ʿUthmān al-ʿAbdī narrated:[ii] Muhammad ibn Jaʿfar narrated; from Shuʿbah; from Salamah ibn Kuhayl; from Abu Salamah; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) owed someone something and he was harsh in demanding it. The Prophet’s Companions were up against him, but the Prophet said to them: “The one with a rightful claim is eloquent. Buy for him an animal of better age and give it to him”. They said that they could only find what was better. He said: “Then buy it and give it to him. The best in repayment are among the best, or are the best, of you”.’**

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارِ بْنِ عُثْمَانَ الْعَبْدِيُّ، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: كَانَ لِرَجُلٍ عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حَقٌّ، فَأَغْلَظَ لَهُ. فَهَمَّ بِهِ أَصْحَابُ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ لِصَاحِبِ الْحَقِّ مَقَالاً». فَقَالَ لَهُمُ: اشْتَرُوا لَهُ سِنًّا، فَأَعْطُوهُ إِيَّاهُ». فَقَالُوا: إِنَّا لاَ نَجِدُ إِلاَّ سِنًّا هُوَ خَيْرٌ مِنْ سِنِّهِ. قَالَ: «فَاشْتَرُوهُ فَأَعْطُوهُ إِيَّاهُ، فَإِنَّ مِنْ خَيْرِكُمْ– أَوْ خَيْرَكُمْ– أَحْسَنُكُمْ قَضَاءً».

[3598–121]. (Dar al-Salam 3899) Abu Kurayb narrated: Wakīʿ narrated; from ʿAlī ibn Ṣāliḥ; from Salamah ibn Kuhayl; from Abu Salamah; from Abu Hurayrah. He said: **‘God’s Messenger borrowed [a camel] of a certain age and repaid it with one of older age. He said: “The best of you are the ones who are good in repayment”.’**

حَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا وَكِيعٌ، عَنْ عَلِيِّ بْنِ صَالِحٍ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: اسْتَقْرَضَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سِنًّا، فَأَعْطَى سِنًّا فَوْقَهُ، وَقَالَ: «خِيَارُكُمْ مَحَاسِنُكُمْ قَضَاءً».

[3599–122]. (Dar al-Salam 3900) Muhammad ibn ʿAbdullāh ibn Numayr narrated: my father narrated; Sufyān narrated; from Salamah ibn Kuhayl; from Abu Salamah; from Abu Hurayrah. He said: **‘A man came to God’s Messenger seeking repayment for his borrowed camel. The Prophet said: “Give him one older than his camel”. He also said: “The best of you are the best in repayment”.’**

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا سُفْيَانُ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ رَجُلٌ يَتَقَاضَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَعِيرًا، فَقَالَ: «أَعْطُوهُ سِنًّا فَوْقَ سِنِّهِ». وَقَالَ: «خَيْرُكُمْ أَحْسَنُكُمْ قَضَاءً».

Text Explanation

This hadith shows that it is permissible to borrow. The Prophet borrowed because he needed to; and he used to seek refuge with God from being in debt. The hadith also shows that it is permissible to borrow an animal.

There are two views expressed by scholars about this point: the first is the view of al-Shāfiʿī, Mālik and the majority of early and later scholars that it is permissible to lend and borrow any type of animal. The other view is shared by Abu Ḥanīfah and the Kufi scholars who maintain that it is not permissible to lend any animal. These hadiths refute their argument. Their claims that these hadiths are abrogated cannot be accepted without clear evidence. The hadiths make clear that it is permissible to borrow and this has the same status as a loan.

The hadiths show that it is recommended for a person who owes something to return what is better. This is an aspect of fine character. It does not come under a loan that brings the lender an additional benefit. Such a loan is forbidden if the benefit is stipulated in the loan agreement. The view of our school is that it is recommended to return the loan with something extra, and the lender may take the extra, whether it is a better quality or a larger number. The Mālikī School does not allow an increase in number, but our scholars argue that the Prophet's statement, 'the best of you are the best in repayment,' is general in its import.

Hadith No. 3595 says: 'He was later brought some camels given as zakat. He ordered Abu Rāfiʿ to give the man a young camel in repayment. Abu Rāfiʿ came back to him and said: I cannot find in them any camel less than six years old. The Prophet said: "Give one to him; the best of people are the best in repayment". This is rather problematic, because it may be asked: how could he make a repayment from the zakat camels which is better than the lender deserves, when it is not permissible to the person in charge of zakat and charity to give away any of it? The answer is that the Prophet borrowed the camel for his own needs. When the zakat camels were brought in, he bought a six-year old camel from a person who was a beneficiary of zakat. Thus, the Prophet owned it for the price he paid for it and gave it to his lender, with the extra coming out of the Prophet's own money. This is further indicated by the hadith narrated by Abu Hurayrah, No. 3597, as the Prophet gives the instructions: 'Buy for him a camel of

better age'. This is the approved answer. Other answers are also given in explanation, such as the real borrower who was a poor person, and the Prophet gave him one of the zakat camels when they were brought in and he had ordered him to settle his loan.

Hadith No. 3597 says: 'God's Messenger (peace be upon him) owed someone something and he was harsh in demanding it. The Prophet's Companions were up against him, but the Prophet said to them: "The one with a rightful claim is eloquent". This shows that a normal demand for repayment of a debt is tolerated. However, this person was harsh in demanding what he was owed. His harshness might have been mere insistence on the need for repayment without delay. It did not include any verbal abuse which, if addressed to the Prophet (peace be upon him), would lead to that person being considered an unbeliever. On the other hand, the person making the harsh demand might have been a non-Muslim, perhaps a Jew or a follower of another religion, but God knows best.

i. Related by Abu Dāwūd, 3346; al-Tirmidhī, 1318; al-Nasā'ī, 4631; Ibn Mājah, 2285.

ii. Related by al-Bukhari, 2305, 2306, 2393; 2606; 2609 and 2401; al-Tirmidhī, in a shorter version, 1316 and 1317; al-Nasā'ī, 4632 and 4707; Ibn Mājah, 2423.

CHAPTER 23

SELLING LIVING CREATURES FOR SIMILAR ONES

[3600–123]. (Dar al-Salam 3901) Yaḥyā ibn Yaḥyā al-Tamīmī and Ibn Rumḥ narrated:[i] both said: al-Layth reported [H]. Also, Qutaybah ibn Saʿīd narrated to me; Layth narrated; from Abu al-Zubayr; from Jābir. He said: **‘A slave came to the Prophet and pledged allegiance to the Prophet and migration. The Prophet did not realize that he was a slave. His master came demanding his return. The Prophet said to him: “Sell him to me”. He bought him for two black slaves. Subsequently, the Prophet did not accept a pledge of allegiance from anyone without asking him whether he was a slave’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، وَابْنُ رُمْحٍ قَالا: أَخْبَرَنَا اللَّيْثُ، ح. وَحَدَّثَنِيهِ قُتَيْبَةُ، بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: جَاءَ عَبْدٌ فَبَايَعَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى الْهِجْرَةِ، وَلَمْ يَشْعُرْ أَنَّهُ عَبْدٌ. فَجَاءَ سَيِّدُهُ يُرِيدُهُ، فَقَالَ لَهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «بِعْنِيهِ». فَاشْتَرَاهُ بِعَبْدَيْنِ أَسْوَدَيْنِ، ثُمَّ لَمْ يُبَايِعْ أَحَدًا بَعْدُ حَتَّى يَسْأَلَهُ: «أَعَبْدٌ هُوَ»؟

Text Explanation

It is understood that the master of this slave was a Muslim. Hence, it was acceptable to sell him the two slaves who also appear to be Muslims

because it is not permissible to sell a Muslim slave to an unbeliever. On the other hand, the master might have been an unbeliever and these two black slaves were unbelievers. It was necessary to establish that the master owned that slave, either with some proof or by the slave's own confirmation before claiming to be free.

The hadith reflects the refined manners of the Prophet (peace be upon him). He disliked frustrating the slave's intention to migrate and remain with the Prophet and his Companions. The Prophet bought him so that he could achieve what he intended.

The hadith also shows the permissibility of selling one slave for two, whether their value is the same or at variance. This is unanimously agreed upon in selling for cash. The same applies to the sale of animals. If one sells a slave for two slaves or a camel for two camels, with payment deferred, al-Shāfiʿī and the majority of scholars say that it is permissible, while Abu Ḥanīfah and the Kufi scholars say it is not. There are other views on the question, but God knows best.

i. Related by al-Tirmidhī, 1239 and 1596; Abu Dāwūd, 3358; al-Nasā'ī, 4195 and 4635.

CHAPTER 24

TO GIVE IN PLEDGE

[3601–124]. (Dar al-Salam 3902) Yaḥyā ibn Yaḥyā, Abu Bakr ibn Abi Shaybah and Muhammad ibn al-ʿAlā’ narrated (Yaḥyā’s text):[i] Abu Muʿāwiyah (Yaḥyā said: ‘reported’ and the other two said: ‘narrated’); from al-Aʿmash; from Ibrāhīm; from al-Aswad; from ʿĀ’ishah. She said: **‘God’s Messenger (peace be upon him) bought some food from a Jew on credit. He gave him his body armour in pledge’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ الْعَلاَءِ (وَاللَّفْظُ لِيَحْيَى). (قَالَ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنِ الأَسْوَدِ، عَنْ عَائِشَةَ قَالَتِ: اشْتَرَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ يَهُودِيٍّ طَعَامًا بِنَسِيئَةٍ، فَأَعْطَاهُ دِرْعًا لَهُ رَهْنًا.

[3602–125]. (Dar al-Salam 3903) Isḥāq ibn Ibrāhīm al-Ḥanẓalī and ʿAlī ibn Khashram narrated: both said: ʿĪsā ibn Yūnus reported; from al-Aʿmash; from Ibrāhīm; from al-Aswad; from ʿĀ’ishah. She said: **‘God’s Messenger (peace be upon him) bought food from a Jew and gave him an iron body armour in pledge’.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ، وَعَلِيُّ بْنُ خَشْرَمٍ، قَالا: أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، عَنِ الأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنِ الأَسْوَدِ، عَنْ عَائِشَةَ قَالَتِ: اشْتَرَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ

وَسَلَّمَ مِنْ يَهُودِيٍّ طَعَامًا، وَرَهَنَهُ دِرْعًا مِنْ حَدِيدٍ.

[3603–126]. (Dar al-Salam 3904) Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated: al-Makhzūmī reported; ʿAbd al-Wāḥid ibn Ziyād narrated; from al-Aʿmash; he said: When we were with Ibrāhīm al-Nakhaʿī, we mentioned pledge in loans. He said: al-Aswad ibn Yazīd narrated; from ʿĀ'ishah; that **'God's Messenger (peace be upon him) bought food on credit from a Jew. He gave him his iron body armour in pledge'.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ، أَخْبَرَنَا الْمَخْزُومِيُّ، حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ، عَنِ الأَعْمَشِ قَالَ: ذَكَرْنَا الرَّهْنَ فِي السَّلَمِ عِنْدَ إِبْرَاهِيمَ النَّخَعِيِّ فَقَالَ: حَدَّثَنَا الأَسْوَدُ بْنُ يَزِيدَ، عَنْ عَائِشَةَ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا إِلَى أَجَلٍ، وَرَهَنَهُ دِرْعًا لَهُ مِنْ حَدِيدٍ.

[3604–000]. (Dar al-Salam 3905) Abu Bakr ibn Abi Shaybah narrated: Ḥafṣ ibn Ghiyāth narrated; from al-Aʿmash; from Ibrāhīm. He said: al-Aswad narrated to me; from ʿĀ'ishah; from the Prophet (peace be upon him): **the same text, but did not mention 'iron'.**

حَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، عَنِ الأَعْمَشِ، عَنْ إِبْرَاهِيمَ قَالَ: حَدَّثَنِي الأَسْوَدُ، عَنْ عَائِشَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: مِثْلَهُ. وَلَمْ يَذْكُرْ: مِنْ حَدِيدٍ.

Text Explanation

The hadith shows that it is permissible to conduct business transactions with people of other faiths, and accept their ownership of what they possess. The hadith shows how little the Prophet cared for the luxuries of this world. It also indicates the permissibility of giving something in pledge, including one's armaments, to non-Muslims, and that it is permissible to arrange a deal in pledge in the town. This is agreed by al-Shāfiʿī, Mālik, Abu Ḥanīfah, Ahmad and all scholars, except Mujāhid and Dāwūd. Both say that a pledge arrangement is only permissible when one is away from home, that is, whilst travelling. They base their view on the Qur'anic verse that says: 'If you are on a journey and cannot find a scribe, pledges taken in hand are sufficient' (2: 283). The majority view is based on this hadith, which takes precedence ahead of the evidence provided by the address in this Qur'anic verse.

Why did the Prophet buy the food from the Jew and give him his body armour in pledge? Several answers are suggested: 1) To show that this is perfectly permissible; 2) The Jew was the only one who had a quantity of food in excess of his family's needs; 3) The Prophet's Companions would not have taken the pledge and would not have charged the Prophet the price of the food. Therefore, he chose to buy from the Jew so that he would not burden any of his Companions.

It is unanimously agreed upon by all Muslims that it is perfectly permissible to deal with non-Muslims, whether they are living under an Islamic state or not, provided that what the non-Muslim is selling is not prohibited. However, it is not permissible to sell arms to non-Muslims. Nor is it permissible for a Muslim to help non-Muslims in the arrangements of their worship or religious rituals. It is also not permissible to sell a copy of the Qur'an to a non-Muslim or to sell a Muslim slave to an unbeliever, but God knows best.

i. Related by al-Bukhari, 2068, 2096, 2200, 2251, 2252, 2386, 2509, 2513 and in a similar version, 2916 and 4467; al-Nasā'ī, 4623 and 4664; Ibn Mājah, 2436.

CHAPTER 25

ADVANCE PAYMENT

[3605–127]. (Dar al-Salam 3906) Yaḥyā ibn Yaḥyā and ʿAmr al-Nāqid narrated (Yaḥyā's text):[i] Sufyān ibn ʿUyaynah (ʿAmr said: 'narrated' and Yaḥyā said: 'reported'); from Ibn Abi Najīḥ; from ʿAbdullāh ibn Kathīr; from Abu al-Minhāl; from Ibn ʿAbbās. He said: **'When the Prophet arrived in Madinah, people used to take advance payment for fruits, for a year or two. He said: "Whoever takes advance payment for dates, should do so for a specified volume, specified weight and for a specified term".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَعَمْرٌو النَّاقِدُ (وَاللَّفْظُ لِيَحْيَى). (قَالَ عَمْرٌو حَدَّثَنَا وَقَالَ يَحْيَى أَخْبَرَنَا) سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ ابْنِ أَبِي نَجِيحٍ، عَنْ عَبْدِ اللهِ بْنِ كَثِيرٍ، عَنْ أَبِي الْـمِنْهَالِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَدِمَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الْـمَدِينَةَ وَهُمْ يُسْلِفُونَ فِي الثِّمَارِ السَّنَةَ وَالسَّنَتَيْنِ، فَقَالَ: «مَنْ أَسْلَفَ فِي تَمْرٍ، فَلْيُسْلِفْ فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ».

[3606–128]. (Dar al-Salam 3907) Shaybān ibn Farrūkh narrated: ʿAbd al-Wārith narrated; from Ibn Abi Najīḥ; ʿAbdullāh ibn Kathīr narrated to me; from Abu al-Minhāl; from Ibn ʿAbbās. He said: **'At the time when God's Messenger came, people used to take advance payment. God's Messenger (peace be upon him) said**

to them: “Whoever takes advance payment must not do so except for a specified volume or specified weight”.’

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا عَبْدُ الْوَارِثِ، عَنِ ابْنِ أَبِي نَجِيحٍ، حَدَّثَنِي عَبْدُ اللهِ بْنُ كَثِيرٍ، عَنْ أَبِي الْمِنْهَالِ، عَنِ ابْنِ عَبَّاسٍ، قَالَ: قَدِمَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَالنَّاسُ يُسْلِفُونَ، فَقَالَ لَهُمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَسْلَفَ فَلاَ يُسْلِفْ إِلاَّ فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ».

[3607–000]. (Dar al-Salam 3908) Yaḥyā ibn Yaḥyā, Abu Bakr ibn Abi Shaybah and Ismāʿīl ibn Sālim narrated: all from Ibn ʿUyaynah; from Ibn Abi Najīḥ; with this chain of transmission: **the same text as ʿAbd al-Wārith’s narration, but did not mention ‘for a specified term’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْمَاعِيلُ بْنُ سَالِمٍ، جَمِيعًا عَنِ ابْنِ عُيَيْنَةَ، عَنِ ابْنِ أَبِي نَجِيحٍ، بِهَذَا الإِسْنَادِ: مِثْلَ حَدِيثِ عَبْدِ الْوَارِثِ. وَلَمْ يَذْكُرْ: «إِلَى أَجَلٍ مَعْلُومٍ».

[3608–000]. (Dar al-Salam 3909) Abu Kurayb and Ibn Abi ʿUmar narrated: both said: Wakīʿ narrated [H]. Also, Muhammad ibn Bashshār narrated; ʿAbd al-Raḥmān ibn Mahdī narrated; both from Sufyān; from Ibn Abi Najīḥ: with their chain of transmission: **the same text as Ibn ʿUyaynah’s narration, mentioning ‘for a specified term’.**

حَدَّثَنَا أَبُو كُرَيْبٍ، وَابْنُ أَبِي عُمَرَ، قَالا: حَدَّثَنَا وَكِيعٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، كِلاَهُمَا عَنْ سُفْيَانَ، عَنِ ابْنِ أَبِي نَجِيحٍ، بِإِسْنَادِهِمْ. مِثْلَ حَدِيثِ ابْنِ عُيَيْنَةَ يَذْكُرُ فِيهِ: «إِلَى أَجَلٍ مَعْلُومٍ».

Text Explanation

This chapter deals with what is known in Arabic as *salam*, which is different from the greeting word *salām* in that it does not carry the long vowel contained within the greeting. *Salam* and loan are contracts that establish owing something in return for what is given at present. *Salam* is defined as a contract concerning something described to be given later in return for something that is given in advance. It is called *salam* because the money is paid at the time of the contract, and it is also called *salaf* because the price is paid in advance. Muslims are unanimous that *salam* is permissible.

In hadith No. 3605, the Prophet says: 'Whoever takes advance payment for dates, should do so for a specified volume, specified weight and for a specified term'. The hadith shows the permissibility of *salam* and states the condition that its amount should be known by volume, weight or some other defining measure. If it is measured by length, such as metres, the number of metres should be specified. If it is by count, as in selling animals, the number should be specified. Thus, the hadith means that if the advance payment is given for what is measured by volume, the volume should be specified, and if it is by weight, the weight should be specified. If the advance payment is made for a term, the due date should be specified. This does not mean that *salam* must be for a term; the payment may be given in advance and the handing over of what is bought may be done at present. If it is for a term, it involves an element of *gharar*, i.e., unclarity. Since it is permissible despite this element of unclarity, it should be perfectly permissible if what is bought is given straightaway, thus removing unclarity.

The hadith which mentions 'for a specified term' does not mean that the deal should involve a term. It simply means that if the deal is made for a term, the term should be specified. Likewise, volume is not a condition, because advance payment may be made in a deal to buy, say, cloth measured by length. In this case, the length should be specified. By the

same token, if it is for a volume or a weight of goods, the volume and the weight should be specified.

Scholars differ concerning the permissibility of *salam*, if it is immediate, but they all agree that it is permissible for a term. Al-Shāfiʿī and other scholars consider immediate *salam* permissible, while Mālik, Abu Ḥanīfah and others say it is not. Yet all scholars make it a condition that the goods should be described in a way that specifies them.

The hadith quotes the Prophet: 'Whoever takes advance payment for dates, should do so for a specified volume and specified weight'. This means that if one is making an advance payment for something that is measured in volume or weight, it should be specified. It also provides evidence that it is permissible to make an advance payment for what is measured by volume if it is specified by weight. There is no disagreement on this, but we have two different views on advance payment for what is measured by weight if it is specified by volume. The more correct view is that it is permissible like the opposite case.

Transmission

The chain of transmission of this hadith, No. 3607 starts as follows: 'Yaḥyā ibn Yaḥyā, Abu Bakr ibn Abi Shaybah and Ismāʿīl ibn Sālim narrated: all from Ibn ʿUyaynah'. This is how it occurs in all manuscripts in our areas, narrated from Ibn ʿUyaynah. It occurs in the same way in the reporting of Abu Ahmad al-Julūdī. However, it occurs in Ibn Māhān's narration from Muslim from his three teachers reporting from Ibn ʿUlayyah Ismāʿīl ibn Ibrāhīm. Abu ʿAlī al-Ghassānī and other Hadith scholars said that Ibn Māhān's reporting is the correct one and whoever studies the hadiths in this chapter carefully will recognize this. *Qadi* ʿIyāḍ said: Muslim first mentions Ibn ʿUyaynah's narration from Ibn Abi Najīḥ, mentioning the term. He then relates ʿAbd al-Wārith's narration from Ibn Abi Najīḥ, but it does not include mention of the term. He then relates Ibn ʿUlayyah's hadith from Ibn Abi Najīḥ stating that it is the same text as ʿAbd al-Wārith's narration

without mentioning the term. Lastly, he mentions the narration of Sufyān al-Thawrī's from Ibn Najīḥ, adding that it is the same as Ibn ʿUyaynah's narration without mentioning the term.

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i. Related by al-Bukhari, 2239, 2240, 2241 and 2253; Abu Dāwūd, 3463; al-Tirmidhī, 1311; al-Nasā'ī, 4630; Ibn Mājah, 2280.

CHAPTER 26

THE PROHIBITION OF FOOD HOARDING

[3609–129]. (Dar al-Salam 3910) ʿAbdullāh ibn Maslamah ibn Qaʿnab narrated:[i] Sulaymān (meaning Ibn Bilāl); from Yaḥyā (who is Ibn Saʿīd). He said: Saʿīd ibn al-Musayyib used to narrate that Maʿmar said: **‘God’s Messenger (peace be upon him) said: “Whoever hoards food is a sinner”. It was said to Saʿīd: “But you hoard”. Saʿīd said: “Maʿmar who used to narrate this hadith hoarded”.’**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبٍ، حَدَّثَنَا سُلَيْمَانُ (يَعْنِي ابْنَ بِلاَلٍ)، عَنْ يَحْيَى (وَهُوَ ابْنُ سَعِيدٍ) قَالَ: كَانَ سَعِيدُ بْنُ الْـمُسَيَّبِ يُحَدِّثُ أَنَّ مَعْمَرًا قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنِ احْتَكَرَ فَهُوَ خَاطِئٌ». فَقِيلَ لِسَعِيدٍ: فَإِنَّكَ تَحْتَكِرُ. قَالَ سَعِيدٌ: إِنَّ مَعْمَرًا الَّذِي كَانَ يُحَدِّثُ هَذَا الْحَدِيثَ كَانَ يَحْتَكِرُ.

[3610–130]. (Dar al-Salam 3911–3912) Saʿīd ibn ʿAmr al-Ashʿathī narrated: Ḥātim ibn Ismāʿīl narrated; from Muhammad ibn ʿAjlān; from Muhammad ibn ʿAmr ibn ʿAṭā’; from Saʿīd ibn al-Musayyib; from Maʿmar ibn ʿAbdullāh; from God’s Messenger (peace be upon him). He said: **‘Only a sinner hoards’.**

حَدَّثَنَا سَعِيدُ بْنُ عَمْرٍو الأَشْعَثِيُّ، حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ، عَنْ مُحَمَّدِ بْنِ عَجْلاَنَ، عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَطَاءٍ، عَنْ سَعِيدِ بْنِ الْـمُسَيَّبِ، عَنْ مَعْمَرِ بْنِ عَبْدِ اللهِ، عَنْ رَسُولِ اللهِ

صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا يَحْتَكِرُ إِلاَّ خَاطِئٌ».

Ibrāhīm said: Muslim said: some of our teachers narrated to me; from ʿAmr ibn ʿAwn; he said: Khālid ibn ʿAbdullāh reported; from ʿAmr ibn Yaḥyā; from Muhammad ibn ʿAmr; from Saʿīd ibn al-Musayyib; from Maʿmar ibn Abi Maʿmar of the clan of ʿAdiy ibn Kaʿb. He said: God's Messenger (peace be upon him) said: **adding the same text as Sulaymān ibn Bilāl's narration from Yaḥyā.**

قَالَ إِبْرَاهِيمُ قَالَ مُسْلِمٌ: وَحَدَّثَنِي بَعْضُ أَصْحَابِنَا عَنْ عَمْرِو بْنِ عَوْنٍ، أَخْبَرَنَا خَالِدُ بْنُ عَبْدِ اللهِ، عَنْ عَمْرِو بْنِ يَحْيَى، عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ سَعِيدِ بْنِ الْـمُسَيَّبِ، عَنْ مَعْمَرِ بْنِ أَبِي مَعْمَرٍ، أَحَدِ بَنِي عَدِيِّ بْنِ كَعْبٍ قَالَ: قَالَ رَسُولُ اللهِ. فَذَكَرَ بِمِثْلِ حَدِيثِ سُلَيْمَانَ بْنِ بِلاَلٍ عَنْ يَحْيَى.

Text Explanation

This hadith is very clear in its import: it strictly forbids hoarding. Our scholars said that the forbidden hoarding is that of hoarding food. It means that a person buys quantities of food at a time when prices are up, for the purpose of reselling it, but he does not resell it soon thereafter. He keeps it for a time to drive the price up further. If a person buys it when the price is low and keeps it for a while, or if he buys it when the price is high for one's family's consumption, or buys it to resell it shortly afterwards, none of these forms is considered hoarding, and they are not forbidden. Non-essential food is not included in the forbidden hoarding. Such is the view of our Shāfiʿī School.

Scholars say that the reason for forbidding hoarding is to repel harm from people generally. It is unanimously agreed by people that if a person

has a quantity of essential food and people are in need of it and cannot find it elsewhere, he is forced to sell it, so that people do not suffer harm.

What is mentioned about Saʿīd ibn al-Musayyib and Maʿmar, the narrator of the hadith, that they hoarded is explained by Ibn ʿAbd al-Barr and other scholars. They said that they hoarded oil, and that they understood the hadith to apply to hoarding basic and essential food when it is in short supply and prices are high. This is also the understanding of al-Shāfiʿī, Abu Ḥanīfah and other scholars, and it is correct.

Transmission

The second chain of transmission of hadith No. 3610 runs as follows: ‘Muslim said: some of our teachers narrated to me; from ʿAmr ibn ʿAwn; he said: Khālid ibn ʿAbdullāh reported; from ʿAmr ibn Yaḥyā; from Muhammad ibn ʿAmr; from Saʿīd ibn al-Musayyib’.

Al-Ghassānī and other scholars said that this is one of the fourteen hadiths in Muslim’s *Ṣaḥīḥ* that are *maqṭūʿ*, i.e., having an incomplete chain of transmission. *Qadi* ʿIyāḍ said: ‘As we stated earlier, this is not incomplete, but reported by an unknown narrator’. What *Qadi* ʿIyāḍ said is correct. It does not affect the authenticity of the hadith, because Muslim cites it by way of endorsement. Muslim also mentions the hadith in complete chains of transmission, naming reliable narrators. As for the unknown narrator, he is named in the version related by Abu Dāwūd and others. In his *Sunan* anthology, Abu Dāwūd relates it from Whab ibn Baqiyyah, from Khāid ibn ʿAbdullāh, from ʿUmar ibn Yaḥyā and his chain of transmission, but God knows best.

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i. Related by Abu Dāwūd, 3447; al-Tirmidhī, 1267; Ibn Mājah, 2154.

CHAPTER 27

PROHIBITION OF USING OATHS IN SELLING

[3611–131]. (Dar al-Salam 3913) Zuhayr ibn Ḥarb narrated:[i] Abu Ṣafwān al-Umawī narrated [H]. Also, Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me; both said: Ibn Wahb reported; both from Yūnus; from Ibn Shihāb; from Ibn al-Musayyib; that Abu Hurayrah said: **‘I heard God’s Messenger say: “Oaths sell a commodity but wipe out profit”.’**

حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا أَبُو صَفْوَانَ الأُمَوِيُّ، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، كِلاَهُمَا عَنْ يُونُسَ، عَنِ ابْنِ شِهَابٍ، عَنِ ابْنِ الْـمُسَيَّبِ، أَنّ أبا هُرِيرةَ قالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «الْحَلِفُ مَنْفَقَةٌ لِلسِّلْعَةِ، مَمْحَقَةٌ لِلرِّبْحِ».

[3612–132]. (Dar al-Salam 3914) Abu Bakr ibn Abi Shaybah, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated (Ibn Abu Shaybah’s text):[ii] Abu Usāmah (Isḥāq said: ‘reported’ and the other two said: ‘narrated’); from al-Walīd ibn Kathīr; from Maʿbad ibn Kaʿb ibn Mālik; from Abu Qatādah al-Anṣārī; that he heard God’s Messenger say: **‘Beware of much swearing when you sell; it sells things but then eliminates’.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لِابْنِ أَبِي شَيْبَةَ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) أَبُو أُسَامَةَ، عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، عَنْ مَعْبَدِ بْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ أَبِي قَتَادَةَ الأَنْصَارِيِّ، أَنَّهُ سَمِعَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «إِيَّاكُمْ وَكَثْرَةَ الْحَلِفِ فِي الْبَيْعِ، فَإِنَّهُ يُنَفِّقُ ثُمَّ يَمْحَقُ».

Text Explanation

This hadith in its two versions prohibits resorting to frequent oaths when selling goods. To unnecessarily swear is discouraged, and there is an added element in this case, which is the need to promote one's goods. The buyer may get swayed when he hears the oaths, but God knows best.

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i. Related by al-Bukhari, 2087; Abu Dāwūd, 3335; al-Nasā'ī, 4473.

ii. Related by al-Nasā'ī, 4472; Ibn Mājah, 2209.

CHAPTER 28

PRE-EMPTION

[3613–133]. (Dar al-Salam 3915) Ahmad ibn Yūnus narrated: Zuhayr narrated; Abu al-Zubayr narrated; from Jābir [H]. Also, Yaḥyā ibn Yaḥyā narrated; Abu Khaythamah reported; from Abu al-Zubayr; from Jābir. He said: **‘God’s Messenger (peace be upon him) said: “Whoever has a partner in a house or a farm may not sell his share until he has informed his partner. If he likes, he may take it, and he leaves it if he does not”.’**

حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ، ح. وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا أَبُو خَيْثَمَةَ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، قَالَ قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ « مَنْ كَانَ لَهُ شَرِيكٌ فِي رَبْعَةٍ أَوْ نَخْلٍ فَلَيْسَ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ فَإِنْ رَضِيَ أَخَذَ وَإِنْ كَرِهَ تَرَكَ».

[3614–134]. (Dar al-Salam 3916) Abu Bakr ibn Abi Shaybah, Muhammad ibn ʿAbdullāh ibn Numayr and Isḥāq ibn Ibrāhīm narrated (Ibn Numayr’s text):[i] ʿAbdullāh ibn Idrīs (Isḥāq said: ‘reported’ and the other two said: ‘narrated’); Ibn Jurayj narrated; from Abu al-Zubayr; from Jābir. He said: **‘God’s Messenger ruled for the right of pre-emption in every partnership that has not been apportioned, whether it is a house or a farm. It is not permissible for one to sell until he has informed his partner. He**

[i.e., the partner] may take it if he so wishes or leave it. If his partner sells it without informing him, he has more claim to it’.

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لِابْنِ نُمَيْرٍ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) عَبْدُ اللهِ بْنُ إِدْرِيسَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: قَضَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِالشُّفْعَةِ فِي كُلِّ شِرْكَةٍ لَمْ تُقْسَمْ، رَبْعَةٍ أَوْ حَائِطٍ. لاَ يَحِلُّ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ. فَإِذَا بَاعَ وَلَمْ يُؤْذِنْهُ، فَهُوَ أَحَقُّ بِهِ.

[3615–135]. (Dar al-Salam 3917) Abu al-Ṭāhir narrated to me: Ibn Wahb reported; from Ibn Jurayj; that Abu al-Zubayr reported to him; that he heard Jābir ibn ʿAbdullāh say: **‘God’s Messenger (peace be upon him) said: “The pre-emption right applies in every partnership: land, home or farm. It is not permissible for a partner to sell until he has offered it to his partner who will either buy or leave it. If he refuses, his partner has a better claim until he informs him”.’**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، عَنِ ابْنِ جُرَيْجٍ، أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الشُّفْعَةُ فِي كُلِّ شِرْكٍ: فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ. لاَ يَصْلُحُ أَنْ يَبِيعَ حَتَّى يَعْرِضَ عَلَى شَرِيكِهِ، فَيَأْخُذَ أَوْ يَدَعَ. فَإِنْ أَبَى فَشَرِيكُهُ أَحَقُّ بِهِ، حَتَّى يُؤْذِنَهُ».

Text Explanation

Pre-emption refers to taking a partner’s share to join it to one’s own share. All Muslims agree that the right of pre-emption belongs to a partner in real

property, as long as the property is not divided. Scholars say that the purpose of the right of pre-emption is to remove harm from a partner, and it specifically applies to real property because it is the type of property that causes most harm. Scholars agree that the right of pre-emption does not apply to shared animals, clothing, and movables. *Qadi* ʿIyāḍ said that some scholars apply the right of pre-emption to all articles. This is reported by Ibn al-Mundhir from ʿAṭā', saying that it applies even to clothing. A report mentions that Ahmad applied it to animals and detached buildings.

A question asks whether it applies to a divided building, on the basis of neighbourhood? Different views are expressed on this point. The view shared by al-Shāfiʿī, Mālik, Ahmad and the majority of scholars is that it does not apply on the basis of neighbourhood. Ibn al-Mundhir attributes this view to ʿUmar ibn al-Khaṭṭāb, ʿUthmān ibn ʿAffān, Saʿīd ibn al-Musayyib, Sulaymān ibn Yasār, ʿUmar ibn ʿAbd al-ʿAzīz, al-Zuhrī, Yaḥyā al-Anṣārī, Abu al-Zinād, Rabīʿah, Mālik, al-Awzāʿī, al-Mughīrah ibn ʿAbd al-Raḥmān, Ahmad, Isḥāq and Abu Thawr. On the other hand, Abu Ḥanīfah and al-Thawrī say that it applies on the basis of neighbourhood, but God knows best.

Scholars cite this hadith as evidence that the right of pre-emption applies only to real property that is divisible. It does not apply to a small bath or mill, etc. It is also cited in support of the view that pre-emption applies to what is indivisible.

Hadith No. 3613 says: 'Whoever has a partner…'. This is general and it includes Muslims and non-Muslims. The right of pre-emption belongs to a *dhimmi*, i.e., a non-Muslim living in the Islamic state, against a Muslim in the same way as it belongs to a Muslim against a *dhimmi*. This is the view of al-Shāfiʿī, Mālik, Abu Ḥanīfah and the majority of scholars, while al-Shaʿbī, al-Ḥasan and Ahmad said that a *dhimmi* has no right of pre-emption against a Muslim. The hadith confirms this right to a bedouin in the same way as it belongs to one who is a town resident. This is stated by al-Shāfiʿī, al-Thawrī, Abu Ḥanīfah, Ahmad, Isḥāq, Ibn al-Mundhir and the majority of

scholars. Al-Shaʿbī, on the other hand, says that the right of pre-emption does not apply to one who does not live in the same town.

In this hadith, the Prophet says: 'Whoever has a partner in a house or a farm may not sell his share until he has informed his partner. If he likes, he may take it, and he leaves it if he does not'. In the other hadith, No. 3614, 'It is not permissible for one to sell until he has informed his partner'. According to our scholars, it is understood to express a recommendation to inform one's partner and a discouragement of selling before giving such information. It is not forbidden to sell without informing one's partner. Such understanding of the hadith is acceptable, because what is discouraged or reprehensible is not permissible. 'Permissible' applies to anything when doing it and refraining from doing it are of equal status. A reprehensible thing is not of two equal values; it is urged to be abandoned.

Suppose that one partner informs the other of his intention to sell and he is given permission to do so, and he then goes on and sells. In this case, can the other partner apply the right of pre-emption? Scholars differ: al-Shāfiʿī, Mālik, Abu Ḥanīfah, ʿUthmān al-Battī, Ibn Abu Laylā and others say that he can. Al-Ḥakam, al-Thawrī, Abu ʿUbayd and several hadith scholars say that he cannot. Two reports expressing these two views are attributed to Ahmad, but God knows best.

i. Related by Abu Dāwūd, 3513; al-Nasā'ī, 4660 and 4715.

CHAPTER 29

FIXING A BEAM IN A NEIGHBOUR'S WALL

[3616–136]. (Dar al-Salam 3917–3918) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Ibn Shihāb; from al-Aʿraj; from Abu Hurayrah; that **'God's Messenger (peace be upon him) said: "None of you should prevent his neighbour fixing a beam in his own wall". Abu Hurayrah then said: "How come I see you turning away? By God, I shall throw this at you".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا يَمْنَعْ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشَبَةً فِي جِدَارِهِ». قَالَ: ثُمَّ يَقُولُ أَبُو هُرَيْرَةَ: مَا لِي أَرَاكُمْ عَنْهَا مُعْرِضِينَ؟ وَاللهِ لأَرْمِيَنَّ بِهَا بَيْنَ أَكْتَافِكُمْ.

Zuhayr ibn Ḥarb narrated: Sufyān ibn ʿUyaynah narrated [H]. Also, Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me; both said: Ibn Wahb reported; Yūnus reported to me [H]. And, ʿAbd ibn Ḥumayd narrated; ʿAbd al-Razzāq reported; Maʿmar reported; all of them from al-Zuhrī; with the same chain of transmission: **a similar text.**

حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

Text Explanation

This hadith is to be read as referring to either ‘a beam’ as a single one or ‘beams’ in the plural. In old writings both the single and plural forms were written the same way. In the hadith, Abu Hurayrah expresses displeasure at people not co-operating in such matters. He threatens that he would repeat the hadith to them time and again, so that they would feel that they are abandoning a recommended practice that encourages co-operation with one’s neighbours.

Scholars differ in their understanding of the hadith and whether it is stating a recommendation or a duty to enable one’s neighbour to fix his beam on one’s own wall. Al-Shāfiʿī and Mālikī scholars express two views, the more correct of which is that it is a recommendation. This is also expressed by Abu Ḥanīfah and Kufi scholars. The other view is that it is a duty, and this is expressed by Ahmad, Abu Thawr and Hadith scholars. This is the apparent meaning of the text of the hadith. Scholars who say that it is a recommendation mention that the people had stopped doing so, which suggests that to them it was a recommendation. Had they understood that it was a duty, they would not have stopped its application. But God knows best.

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i. Related by al-Bukhari, 2463; Abu Dāwūd, 3634; al-Tirmidhī, 1353; Ibn Mājah, 2335.

CHAPTER 30

THE PROHIBITION OF INJUSTICE AND WRONGFUL APPROPRIATION

[3617–137]. (Dar al-Salam 3920) Yaḥyā ibn Ayyūb, Qutaybah ibn Saʿīd and ʿAlī ibn Ḥujr narrated: they said: Ismāʿīl (who is Ibn Jaʿfar) narrated; from al-ʿAlā' ibn ʿAbd al-Raḥmān; from ʿAbbās ibn Sahl ibn Saʿd al-Sāʿidī; from Saʿīd ibn Zayd ibn ʿAmr ibn Nufayl; that **'God's Messenger said: "Whoever wrongfully appropriates a single hand span of land, God will make him carry it around his neck on the Day of Judgement to the depth of seven earths".'**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَعَلِيُّ بْنُ حُجْرٍ، قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنِ الْعَلاَءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ عَبَّاسِ بْنِ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ، عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنِ اقْتَطَعَ شِبْرًا مِنَ الأَرْضِ ظُلْمًا طَوَّقَهُ اللهُ إِيَّاهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرَضِينَ».

[3618–138]. (Dar al-Salam 3921) Ḥarmalah ibn Yaḥyā narrated to me: ʿAbdullāh ibn Wahb reported; ʿUmar ibn Muhammad narrated to me; that his father narrated; from Saʿīd ibn Zayd ibn ʿAmr ibn Nufayl; that **'Arwā disputed with him regarding his home. He said: "Let her have it. I heard God's Messenger (peace be upon him) say: 'Whoever takes a hand span of land, having no right**

to it, shall on the Day of Judgement be made to carry it around his neck to the depth of seven earths'. My Lord, if she is lying, take away her sight and let her grave be in her home". He [i.e., the narrator] said: "I saw her blind groping against walls". She said: "Saʿīd ibn Zayd's supplication has hit me. As she was walking at home she stepped over a well and fell into it, which became her grave".'

حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، حَدَّثَنِي عُمَرُ بْنُ مُحَمَّدٍ، أَنَّ أَبَاهُ حَدَّثَهُ، عَنْ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ، أَنَّ أَرْوَى خَاصَمَتْهُ فِي بَعْضِ دَارِهِ. فَقَالَ: دَعُوهَا وَإِيَّاهَا، فَإِنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ أَخَذَ شِبْرًا مِنَ الأَرْضِ بِغَيْرِ حَقِّهِ طُوِّقَهُ فِي سَبْعِ أَرَضِينَ يَوْمَ الْقِيَامَةِ». اللَّهُمَّ إِنْ كَانَتْ كَاذِبَةً فَأَعْمِ بَصَرَهَا، وَاجْعَلْ قَبْرَهَا فِي دَارِهَا. قَالَ: فَرَأَيْتُهَا عَمْيَاءَ تَلْتَمِسُ الْجُدُرَ، تَقُولُ: أَصَابَتْنِي دَعْوَةُ سَعِيدِ بْنِ زَيْدٍ. فَبَيْنَمَا هِيَ تَمْشِي فِي الدَّارِ، مَرَّتْ عَلَى بِئْرٍ فِي الدَّارِ، فَوَقَعَتْ فِيهَا فَكَانَتْ قَبْرَهَا.

[3619–139]. (Dar al-Salam 3922) Abu al-Rabīʿ al-ʿAtakī narrated:[i] Ḥammād ibn Zayd narrated; from Hishām ibn ʿUrwah; from his father; that **'Arwā bint Uways claimed that Saʿīd ibn Zayd took a part of her land. She put her dispute to Marwān ibn al-Ḥakam. Saʿīd said: "Would I take a part of her land after what I heard God's Messenger (peace be upon him) say?" Marwān asked: "What did you hear God's Messenger (peace be upon him) say?" He said: "I heard God's Messenger (peace be upon him) say: 'Whoever unjustly takes a span of land shall be made to carry it around his neck to the depth of seven earths'." Marwān said to him: "I shall not ask you for a proof now". [Saʿīd] said: "My Lord, if she is lying, take away her sight and**

kill her on her land". She became blind before her death. One day, as she was walking on her land, she fell in a hole and died.

حَدَّثَنَا أَبُو الرَّبِيعِ الْعَتَكِيُّ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، أَنَّ أَرْوَى بِنْتَ أُوَيْسٍ، ادَّعَتْ عَلَى سَعِيدِ بْنِ زَيْدٍ أَنَّهُ أَخَذَ شَيْئًا مِنْ أَرْضِهَا، فَخَاصَمَتْهُ إِلَى مَرْوَانَ بْنِ الْحَكَمِ. فَقَالَ سَعِيدٌ: أَنَا كُنْتُ آخُذُ مِنْ أَرْضِهَا شَيْئًا بَعْدَ الَّذِي سَمِعْتُ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ قَالَ: وَمَا سَمِعْتَ مِنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ أَخَذَ شِبْرًا مِنَ الأَرْضِ ظُلْمًا طُوِّقَهُ إِلَى سَبْعِ أَرَضِينَ». فَقَالَ لَهُ مَرْوَانُ لاَ أَسْأَلُكَ بَيِّنَةً بَعْدَ هَذَا. فَقَالَ: اللَّهُمَّ إِنْ كَانَتْ كَاذِبَةً، فَعَمِّ بَصَرَهَا، وَاقْتُلْهَا فِي أَرْضِهَا. قَالَ: فَمَا مَاتَتْ حَتَّى ذَهَبَ بَصَرُهَا. ثُمَّ بَيْنَا هِيَ تَمْشِي فِي أَرْضِهَا إِذْ وَقَعَتْ فِي حُفْرَةٍ، فَمَاتَتْ.

[3620–140]. (Dar al-Salam 3923) Abu Bakr ibn Abi Shaybah narrated: Yaḥyā ibn Zakariyyā' ibn Abi Zā'idah narrated; from Hishām; from his father; from Saʿīd ibn Zayd. He said: **'I heard the Prophet (peace be upon him) say: "Whoever wrongfully takes a span of land shall be made to carry it around his neck to the depth of seven earths on the Day of Judgement".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّاءَ بْنِ أَبِي زَائِدَةَ، عَنْ هِشَامٍ، عَنْ أَبِيهِ، عَنْ سَعِيدِ بْنِ زَيْدٍ قَالَ: سَمِعْتُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ أَخَذَ شِبْرًا مِنَ الأَرْضِ ظُلْمًا فَإِنَّهُ يُطَوَّقُهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرَضِينَ».

[3621–141]. (Dar al-Salam 3924) Zuhayr ibn Ḥarb narrated to me: Jarīr narrated; from Suhayl; from his father; from Abu Hurayrah. He said: **'God's Messenger (peace be upon him) said: "If**

anyone takes a span of land having no right to it, God will make him carry it around his neck on the Day of Judgement to the depth of seven earths”.’

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا جَرِيرٌ، عَنْ سُهَيْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا يَأْخُذُ أَحَدٌ شِبْرًا مِنَ الأَرْضِ بِغَيْرِ حَقِّهِ إِلاَّ طَوَّقَهُ اللهُ، إِلَى سَبْعِ أَرَضِينَ، يَوْمَ الْقِيَامَةِ».

[3622–142]. (Dar al-Salam 3925–3926) Ahmad ibn Ibrāhīm al-Dawraqī narrated:[ii] ʿAbd al-Ṣamad (meaning Ibn ʿAbd al-Wārith) narrated; Ḥarb (who is Ibn Shaddād) narrated; Yaḥyā (who is Ibn Abi Kathīr) narrated; from Muhammad ibn Ibrāhīm; that **‘Abu Salamah narrated to him that he had a dispute with his people about a certain land. He went to ʿĀ’ishah and mentioned it to her. She said: “Abu Salamah, leave the land alone. God’s Messenger (peace be upon him) said: ‘Whoever wrongs someone with as much as a span of land shall be made to carry it around his neck to the depth of seven earths’.”’**

حَدَّثَنَا أَحْمَدُ بْنُ إِبْرَاهِيمَ الدَّوْرَقِيُّ، حَدَّثَنَا عَبْدُ الصَّمَدِ (يَعْنِي ابْنَ عَبْدِ الْوَارِثِ)، حَدَّثَنَا حَرْبٌ (وَهُوَ ابْنُ شَدَّادٍ)، حَدَّثَنَا يَحْيَى (وَهُوَ ابْنُ أَبِي كَثِيرٍ)، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ، أَنَّ أَبَا سَلَمَةَ حَدَّثَهُ. وَكَانَ بَيْنَهُ وَبَيْنَ قَوْمِهِ خُصُومَةٌ فِي أَرْضٍ، وَأَنَّهُ دَخَلَ عَلَى عَائِشَةَ، فَذَكَرَ ذَلِكَ لَهَا فَقَالَتْ: يَا أَبَا سَلَمَةَ، اجْتَنِبِ الأَرْضَ. فَإِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ ظَلَمَ قِيدَ شِبْرٍ مِنَ الأَرْضِ طُوِّقَهُ مِنْ سَبْعِ أَرَضِينَ».

Isḥāq ibn Manṣūr narrated to me: Ḥabbān ibn Hilāl reported; Abān reported; Yaḥyā narrated; that Muhammad ibn Ibrāhīm narrated to

him; that Abu Salamah narrated to him; that **‘He went to ʿĀ’ishah…’ he added the same text.**

وَحَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا حَبَّانُ بْنُ هِلاَلٍ، أَخْبَرَنَا أَبَانٌ، حَدَّثَنَا يَحْيَى، أَنَّ مُحَمَّدَ بْنَ إِبْرَاهِيمَ حَدَّثَهُ، أَنَّ أَبَا سَلَمَةَ حَدَّثَهُ أَنَّهُ دَخَلَ عَلَى عَائِشَةَ، فَذَكَرَ مِثْلَهُ.

Text Explanation

The hadith tells us that there are seven layers to the earth. This is consistent with what God says: ‘It is God who has created seven heavens and a similar number of the earth’. (65: 12) A different rendering of the verse would say: ‘It is God who has created seven heavens and the like of the earth’. Some have suggested that ‘the like’ means similarity of shape, but this is contrary to the apparent meaning of the verse. The same may be said about the suggestion that ‘seven earths’ in the hadith means seven lands from seven provinces, because the earths are seven layers. This is an incorrect interpretation according to all scholars because a person who wrongfully takes a span of land from one province will not be made to carry a span of land from another province. This is different from making him carry the depth of that same span right down through several layers. *Qadi* ʿIyāḍ said that there is an unconfirmed hadith which speaks of the depths of the earth and their layers.

The hadith mentions that such a person will carry the land he wrongfully takes on his neck. Scholars said that it may mean that he is made to carry the same area of land from the seven earths and required to shoulder all these.[iii] It is also possible that the land he unjustly took will be made like a circle placed around his neck, as God says in the Qur’an: ‘That to which they miserly cling will hang around their necks on the Day of Resurrection’. (3: 180) Another suggestion is that it means the sin he commits will be made like a necklace around his neck. If we take this

meaning of its being ‘around his neck’, then God will make that person’s neck long enough to carry all that, in the same way as the thickening of the unbeliever’s skin and the stiffening of his molars.

These hadiths clearly state the prohibition of injustice and wrongful appropriation of what belongs to others, confirming that it incurs very stern punishment. The hadiths show that it is possible to appropriate land that belongs to others. This is the view of our school and the majority of scholars, but Abu Ḥanīfah says that land appropriation is inconceivable.

The hadith tells of the noble character of Saʿīd ibn Zayd and that his supplication was answered. It shows that it is perfectly permissible to pray to God to punish the one who is unjust, but God knows best.

We need to add that Saʿīd ibn Zayd was one of the earliest Companions of the Prophet. He was ʿUmar ibn al-Khaṭṭāb’s cousin and brother-in-law. He is one of the ten Companions of the Prophet who were given the promise of being in heaven. His father, Zayd ibn ʿAmr, died before Islam, but he rejected idol worship and travelled in search of the true religion. He was told by Christian priests that a new messenger was soon to be given his message and he was to wait for this messenger.

i. Related by al-Bukhari, 3198.

ii. Related by al-Bukhari, 2453 and 3295.

iii. This interpretation uses a different meaning of the word *yuṭawwaq*, rendered in our translation as ‘carry it around his neck’. This interpretation uses the other meaning ‘carry a burden’ or ‘tolerate pressure’.

CHAPTER 31

THE WIDTH OF THE ROAD

[3623–143]. (Dar al-Salam 3927) Abu Kāmil Fuḍayl ibn Ḥusayn al-Jaḥdarī narrated to me: ʿAbd al-ʿAzīz ibn al-Mukhtār narrated; Khālid al-Ḥadhdh' narrated; from Yūsuf ibn ʿAbdullāh; from his father; from Abu Hurayrah; that the Prophet (peace be upon him) said: **'If you are in disagreement about the road, its width should be seven cubits'.**

حَدَّثَنِي أَبُو كَامِلٍ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ، حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ الْـمُخْتَارِ، حَدَّثَنَا خَالِدٌ الْحَذَّاءُ، عَنْ يُوسُفَ بْنِ عَبْدِ اللهِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِذَا اخْتَلَفْتُمْ فِي الطَّرِيقِ، جُعِلَ عَرْضُهُ سَبْعَ أَذْرُعٍ».

Text Explanation

This hadith refers to the width of a road. If a person makes a part of a land which he owns as a path available freely to passers-by, its width is up to him to determine, but it is preferable to make it wide. But this is not the case to which the hadith refers.

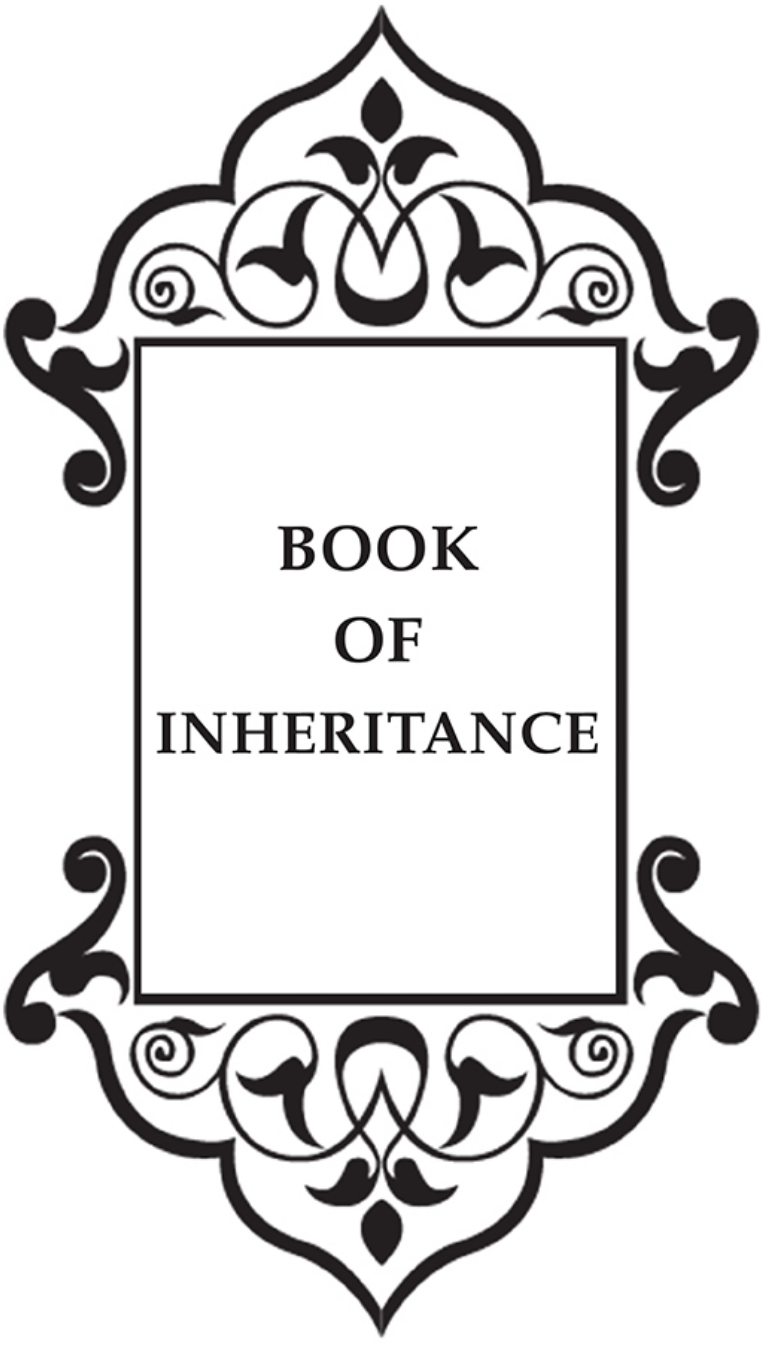
If the road is in between land owned by different people and they wish to keep it as a passage, what they agree is valid. In case they differ and are in dispute about the width of the passage, it should be made seven cubits. This is the case the hadith seeks to determine. However, if there is a used passage which is wider than seven cubits, no one may take any portion of it,

no matter how small. But it is permissible to revive any barren land around the passage, and when he has revived a piece of such land, it belongs to him, on condition that it does not inconvenience passers-by.

Our Shāfiʿī scholars say that if there is a used passage which opens to a public area we rule that it is a public pathway as it appears in practice. No consideration is given to the time when it became a public passage. Imam al-Ḥaramayn and other scholars said that its becoming a street does not require any verbal declaration making it a public way.

This is what our Shāfiʿī scholars say about this hadith. Other scholars said that this applies to open areas where its owners want to construct buildings. Their passage is made seven cubits in order to facilitate the entry and exit of loads. *Qadi* ʿIyāḍ said that all this applies when the people differ, as the hadith states. If the people of the land agree to make a part of it a passage, they are free to determine what suits them. No objection may be made, because the land is their own.

It is God who best knows what is right, and to Him we shall all return.


BOOK
OF
INHERITANCE

CHAPTER 0

NO INHERITANCE BETWEEN MUSLIMS AND NON-MUSLIMS

[3624–1]. (Dar al-Salam 3928) Yaḥyā ibn Yaḥyā, Abu Bakr ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated (Yaḥyā's text):[i] Ibn ʿUyaynah (Yaḥyā said: 'reported' and the other two said: 'narrated'); from al-Zuhrī; from ʿAlī ibn Ḥusayn; from ʿAmr ibn ʿUthmān; from Usāmah ibn Zayd; that the Prophet (peace be upon him) said: **'A Muslim does not inherit an unbeliever, nor does an unbeliever inherit a Muslim'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيم (وَاللَّفْظُ لِيَحْيَى). (قَالَ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) ابْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عَلِيِّ بْنِ حُسَيْنٍ، عَنْ عَمْرِو بْنِ عُثْمَانَ، عَنْ أُسَامَةَ بْنِ زَيْدٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا يَرِثُ الْـمُسْلِمُ الْكَافِرَ وَلا يَرِثُ الْكَافِرُ الْـمُسْلِمَ».

Text Explanation

Islam lays down a detailed system of inheritance, with stipulated shares given to immediate relatives. In Arabic, these stipulated shares are called *farā'iḍ*, which is the plural form of *farīḍah*, meaning obligatory. As these shares are mentioned in the Qur'an, they are binding on all and cannot be changed. Indeed, the book of inheritance is normally called *Kitāb al-*

Farā'iḍ because it looks at different cases and how the stipulated shares are given.

This hadith with which Muslim opens this part of his anthology quotes the Prophet (peace be upon him): 'A Muslim does not inherit an unbeliever, nor does an unbeliever inherit a Muslim'. Muslims are unanimous that an unbeliever has no right of inheritance from a Muslim. Likewise, according to the great majority of scholars among the Prophet's Companions, the *tābiʿīn* and later generations agree that a Muslim does not have a right of inheritance from a non-Muslim. This is the view of Muʿādh ibn Jabal, Muʿāwiyah, Saʿīd ibn al-Musayyib, Masrūq and others. A similar view is attributed to Abu al-Dardā', al-Shaʿbī, al-Zuhrī, al-Nakhaʿī with some differences between them. The correct view from these is the same as that of the majority.

Scholars who say that a Muslim inherits from an unbeliever relative base their argument on the hadith that says: 'Islam prevails and nothing prevails over Islam'. By contrast, the basis of the view of the majority of scholars is the present authentic hadith which is clear in its import. Needless to say, the hadith speaking about Islam prevailing merely states the merit of Islam and that it is superior to other religions. It does not refer to inheritance. How come, then, it is used as an argument to counter the Prophet's statement: 'A Muslim does not inherit an unbeliever'. Perhaps these scholars were not aware of this hadith.

If the unbeliever is an apostate, he does not inherit a Muslim, and this is the unanimous view of all scholars. Likewise, a Muslim does not inherit an apostate according to al-Shāfiʿī, Mālik, Rabīʿah, Ibn Abi Laylā and others. The estate of the apostate is considered a gain to the Muslim community. However, Abu Ḥanīfah, Kufi scholars, al-Awzāʿī and Isḥāq say that an apostate is inherited by his Muslim relatives who are his heirs. This is also reported from ʿAlī, Ibn Masʿūd and a number of early scholars. Al-Thawrī and Abu Ḥanīfah said that what an apostate earns after renouncing Islam

goes to the Muslims generally, while the others say that all his property goes to his Muslim heirs.

Do unbelievers inherit one another when they follow different faiths, such as a Jew inheriting a Christian or a Zoroastrian, or the opposite case? Al-Shāfiʿī, Abu Ḥanīfah and other scholars say that they do. On the other hand, Mālik said they do not. Al-Shāfiʿī also said that an unbeliever living in a land of war cannot inherit one who lives in a Muslim state, nor the opposite scenario. Our scholars also add that two unbelievers living in two countries that are at war with each other cannot inherit each other, but God knows best.

i. Related by al-Bukhari, 6764 and 4283; Abd Dāwūd, 2909; al-Tirmidhī, 2107; Ibn Mājah, 2729.

CHAPTER 1

THE REMAINDER AFTER GIVING THE STIPULATED SHARES

[3625–2]. (Dar al-Salam 3929) ʿAbd al-Aʿlā ibn Ḥammād (who is al-Narsī) narrated:[i] Wuhayb narrated; from Ibn Ṭāwūs; from his father; from Ibn ʿAbbās. He said: **‘God’s Messenger (peace be upon him) said: “Give the stipulated shares to their owners; what is left over goes to the nearest male person”.’**

حَدَّثَنَا عَبْدُ الأَعْلَى بْنُ حَمَّادٍ (وَهُوَ النَّرْسِيُّ)، حَدَّثَنَا وُهَيْبٌ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ، قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا. فَمَا بَقِيَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ».

[3626–3]. (Dar al-Salam 3930) Umayyah ibn Bisṭām al-ʿAyshī narrated: Yazīd ibn Zurayʿ narrated; Rawḥ ibn al-Qāsim narrated; from ʿAbdullāh ibn Ṭāwūs; from his father; from Ibn ʿAbbās; from God’s Messenger (peace be upon him). He said: **‘Give the stipulated shares to their owners; whatever the stipulated shares leave behind goes to the nearest male person.’**

حَدَّثَنَا أُمَيَّةُ بْنُ بِسْطَامَ الْعَيْشِيُّ، حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، حَدَّثَنَا رَوْحُ بْنُ الْقَاسِمِ، عَنْ عَبْدِ اللهِ بْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا تَرَكَتِ الْفَرَائِضُ فَلأَوْلَى رَجُلٍ ذَكَرٍ».

[3627–4]. (Dar al-Salam 3931) Isḥāq ibn Ibrāhīm, Muhammad ibn Rāfiʿ and ʿAbd ibn Ḥumayd narrated (Ibn Rāfiʿ's text): ʿAbd al-Razzāq (Isḥāq said: 'narrated' and the other two said: 'reported'); Maʿmar reported; from Ibn Ṭāwūs; from his father; from Ibn ʿAbbās. He said: **'God's Messenger (peace be upon him) said: "Assign the estate to the ones entitled to stipulated shares according to God's Book. What is left after the stipulated shares goes to the nearest male person".'**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ رَافِعٍ، وَعَبْدُ بْنُ حُمَيْدٍ (وَاللَّفْظُ لِابْنِ رَافِعٍ). (قَالَ إِسْحَاقُ حَدَّثَنَا وَقَالَ الآخَرَانِ أَخْبَرَنَا) عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «اقْسِمُوا الْمَالَ بَيْنَ أَهْلِ الْفَرَائِضِ عَلَى كِتَابِ اللهِ، فَمَا تَرَكَتِ الْفَرَائِضُ فَلأَوْلَى رَجُلٍ ذَكَرٍ».

Muhammad ibn al-ʿAlā' Abu Kurayb al-Hamdānī narrated: Zayd ibn Ḥubāb narrated; from Yaḥyā ibn Ayyūb; from Ibn Ṭāwūs; with the same chain of transmission: **a similar text to the narration by Wuhayb and Rawḥ ibn al-Qāsim.**

وَحَدَّثَنِيهِ مُحَمَّدُ بْنُ الْعَلاَءِ أَبُو كُرَيْبٍ الْهَمْدَانِيُّ، حَدَّثَنَا زَيْدُ بْنُ حُبَابٍ، عَنْ يَحْيَى بْنِ أَيُّوبَ، عَنِ ابْنِ طَاوُسٍ، بِهَذَا الإِسْنَادِ: نَحْوَ حَدِيثِ وُهَيْبٍ وَرَوْحِ بْنِ الْقَاسِمِ.

Text Explanation

The hadiths require that the heirs entitled to stipulated shares are given their shares first. What is left of the estate after that goes to 'the nearest male person'. A more literal translation is 'the nearest male man', because the Prophet uses the two words together. The Prophet describes the man as

male to alert us to the reason for this ruling. A male heir blocks other relatives. He is given twice the share of his female counterpart because men have greater responsibilities, such as looking after their families, hospitality to their guests and those who seek help, as well as paying shares of indemnity, etc. But God knows best.

The hadiths in this chapters state the inheritance of relatives who do not have stipulated shares. All Muslims agree that the part of the estate that is left after the stipulated shares goes to the deceased's close relatives, starting with the closest ones. In Arabic, these are called *ʿaṣabah* and each one is *ʿāṣib*. Suppose a person dies and his immediate relatives are one daughter, one brother and one paternal uncle. The daughter takes half the deceased's property as her stipulated share. The remainder goes to the deceased's brother, while his uncle inherits nothing. Our scholars say that the *ʿaṣabah* are of three categories:

The first category is the direct *ʿaṣabah*, meaning that he is an heir by virtue of his relation to the deceased. This may be a son, grandson, brother, nephew, paternal uncle, paternal cousin, grandfather, a grandfather's son, etc. A deceased person's father or grandfather may be *ʿaṣabah* or may have stipulated shares. If the deceased has a son or a grandson, his father gets only a stipulated share of one-sixth of the estate. If the deceased has neither a surviving son nor grandson, his father inherits only as *ʿaṣabah*. If the deceased leaves behind a daughter, a son's daughter, two daughters or two son's daughters, they take their stipulated shares and his father takes one-sixth as his stipulated share, and he also takes the remainder for being the *ʿaṣabah*.

The second category is the *ʿaṣabah* through someone else. This is the case of the deceased's daughters who are *ʿaṣabah* with the deceased's sons, or the deceased's son's daughters with his son's sons,[ii] or the deceased's sisters with their brothers. In all these cases the female relatives of the deceased join his male relatives of the same rank to form the *ʿaṣabah* and jointly inherit from the deceased.

The third category is the *ʿaṣabah* with someone else. This is the case of the deceased's full sisters or half-sisters who are daughters of his father, with the deceased's daughters or his son's daughters. If the deceased leaves behind one daughter and one full-sister or half-sister born to his father, his daughter takes one-half of his estate as her stipulated share and the remainder goes to his sister as *ʿaṣabah*. If the deceased leaves behind one daughter, one son's daughter, one full-sister or half-sister born to his father, his daughter takes one-half and son's daughter one-sixth as their respective stipulated shares, and the remainder goes to his sister as *ʿaṣabah*. If the deceased leaves behind two daughters and two son's daughters one full sister or half-sister born to his father, his two daughters take two-thirds of his estate and the remainder goes to his sister. His son's daughters get nothing because the portion that goes to his female offspring, which is two-thirds, is fully taken by his daughters.

Scholars of our Shāfiʿī School said that whenever the term *ʿaṣabah* is mentioned without qualification, it refers to the first category: i.e., any male who is directly related to the deceased, not through any female relative. When there is one person who is *ʿaṣabah*, he takes all the estate, and if he happens to be joined by heirs with stipulated shares that take up the entire estate, they take their shares and the *ʿaṣabah* receives nothing. If their joint shares leave a portion of the estate, this portion goes to the *ʿaṣabah*.

The closest *ʿaṣabah* are the deceased's sons, then their sons, then the deceased's father, then his grandfather if the deceased has no brother, or his brother if his grandfather does not survive him. If the deceased has both his brother and his grandfather surviving him, the case is subject to a well-known divergence of views. The next degree of *ʿaṣabah* is that of the deceased's brothers, then their sons or grandsons, then the deceased's father's paternal uncles, then their sons, then his grandfather's paternal uncles then their sons, etc. Whoever is related to the deceased through both his parents takes precedence over the one in the same degree but related

through his father only. Thus a full brother ranks ahead of a half brother through the same father.

If the deceased leaves behind one daughter, one full sister and one half brother born to his father, then according to the view of our school and the majority of scholars, his daughter takes one half as her stipulated share and the remainder goes to his sister. Nothing is left to his half-brother. On the other hand, Ibn ʿAbbās said about this case that the deceased's daughter takes one-half and the remainder goes to his half-brother. His sister takes nothing. The hadiths In this chapter apparently confirm his view, but God knows best.

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i. Related by al-Bukhari, 6732, 6735, 6737 and 6746; Abu Dāwūd, 2898; al-Tirmidhī, 2098; Ibn Mājah, 2740.

ii. We speak of the deceased's son's daughter and son's son, rather than granddaughters and grandsons, in order to exclude his other grandsons and grand-daughters.

CHAPTER 2

THE CASE OF *KALĀLAH* INHERITANCE

[3628–5]. (Dar al-Salam 3932) ʿAmr ibn Muhammad ibn Bukayr al-Nāqid narrated:[i] Sufyān ibn ʿUyaynah narrated; from Muhammad ibn al-Munkadir. He heard Jābir ibn ʿAbdullāh say: **'I was ill. God's Messenger (peace be upon him) and Abu Bakr came walking to visit me. I fainted. [The Prophet] performed the ablution and sprinkled on me some of the water of his ablution and I regained consciousness. I said: "Messenger of God, how do I dispense of my property?" He gave me no reply, until the verse relating to inheritance: "They will ask you for a verdict". Say: "God Himself gives you His ruling concerning the inheritance of a person who leaves no heir in the direct line".' (4: 176)**

حَدَّثَنَا عَمْرُو بْنُ مُحَمَّدِ بْنِ بُكَيْرٍ النَّاقِدُ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ مُحَمَّدِ بْنِ الْـمُنْكَدِرِ، سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ قَالَ: مَرِضْتُ فَأَتَانِي رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَأَبُو بَكْرٍ يَعُودَانِي مَاشِيَيْنِ، فَأُغْمِيَ عَلَيَّ، فَتَوَضَّأَ ثُمَّ صَبَّ عَلَيَّ مِنْ وَضُوئِهِ، فَأَفَقْتُ. قُلْتُ: يَا رَسُولَ اللهِ، كَيْفَ أَقْضِي فِي مَالِي؟ فَلَمْ يَرُدَّ عَلَيَّ شَيْئًا حَتَّى نَزَلَتْ آيَةُ الْـمِيرَاثِ: «يَسْتَفْتُونَكَ قُلِ اللهُ يُفْتِيكُمْ فِي الْكَلاَلَةِ».

[3629–6]. (Dar al-Salam 3933) Muhammad ibn Ḥātim ibn Maymūn narrated to me:[ii] Ḥajjāj ibn Muhammad narrated; Ibn Jurayj

narrated; he said: Ibn al-Munkadir reported to me; from Jābir ibn ʿAbdullāh. He said: **‘The Prophet and Abu Bakr came on foot to visit me at Bani Salamah’s quarters during my illness. He found me unconscious. He called for some water and performed the ablution, then sprinkled some of this water on me and I came to. I said: “What shall I do with my property, Messenger of God?” Then God revealed the verse: “God has this to enjoin on you with regard to your children: the male shall have a share equal to that of two females”.’ (4: 11)**

حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ، حَدَّثَنَا حَجَّاجُ بْنُ مُحَمَّدٍ، حَدَّثَنَا ابْنُ جُرَيْجٍ قَالَ: أَخْبَرَنِي ابْنُ الْمُنْكَدِرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ قَالَ: عَادَنِي النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَأَبُو بَكْرٍ فِي بَنِي سَلَمَةَ يَمْشِيَانِ، فَوَجَدَنِي لاَ أَعْقِلُ. فَدَعَا بِمَاءٍ فَتَوَضَّأَ، ثُمَّ رَشَّ عَلَيَّ مِنْهُ فَأَفَقْتُ، فَقُلْتُ: كَيْفَ أَصْنَعُ فِي مَالِي يَا رَسُولَ اللهِ؟ فَنَزَلَتْ: «يُوصِيكُمُ اللهُ فِي أَوْلاَدِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ».

[3630–7]. (Dar al-Salam 3934) ʿUbaydullāh ibn ʿUmar al-Qawārīrī narrated: ʿAbd al-Raḥmān (meaning Ibn Mahdī) narrated; Sufyān narrated. He said: I heard Muhammad ibn al-Munkadir say: I heard Jābir ibn ʿAbdullāh say: **‘God’s Messenger (peace be upon him) came to visit me during my illness, accompanied by Abu Bakr and both came walking. He found me unconscious. God’s Messenger performed the ablution, then sprinkled on me some of the water of his ablution and I came to, and there was God’s Messenger (peace be upon him). I said: “Messenger of God, how do I dispense with my property?” He did not give me any reply until the verse of inheritance was revealed.’**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ (يَعْنِي ابْنَ مَهْدِيٍّ)، حَدَّثَنَا سُفْيَانُ قَالَ: سَمِعْتُ مُحَمَّدَ بْنَ الْـمُنْكَدِرِ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: عَادَنِي رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَأَنَا مَرِيضٌ، وَمَعَهُ أَبُو بَكْرٍ، مَاشِيَيْنِ. فَوَجَدَنِي قَدْ أُغْمِيَ عَلَيَّ، فَتَوَضَّأَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ثُمَّ صَبَّ عَلَيَّ مِنْ وَضُوئِهِ. فَأَفَقْت، فَإِذَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: يَا رَسُولَ اللهِ كَيْفَ أَصْنَعُ فِي مَالِي؟ فَلَمْ يَرُدَّ عَلَيَّ شَيْئًا، حَتَّى نَزَلَتْ آيَةُ الْـمِيرَاثِ.

[3631–8]. (Dar al-Salam 3935) Muhammad ibn Ḥātim narrated to me:[iii] Bahz narrated; Shuʿbah narrated; Muhammad ibn al-Munkadir reported to me. He said: **‘I heard Jābir ibn ʿAbdullāh say: “God’s Messenger entered my place when I was ill, unconscious. He performed the ablution and they sprinkled on me some water of his ablution and I regained consciousness. I said: ‘Messenger of God, I am inherited without an heir in the direct line [i.e., *kalālah*]. The verse concerning inheritance was then revealed’.**

I said to Muhammad ibn al-Munkadir: [Does this mean]: ‘They will ask you for a verdict. Say: “God Himself gives you His ruling concerning the inheritance of a person who leaves no heir in the direct line?”’ He said: ‘It was thus revealed’.”’

حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا بَهْزٌ، حَدَّثَنَا شُعْبَةُ، أَخْبَرَنِي مُحَمَّدُ بْنُ الْـمُنْكَدِرِ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: دَخَلَ عَلَيَّ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَأَنَا مَرِيضٌ لاَ أَعْقِلُ، فَتَوَضَّأَ، فَصَبُّوا عَلَيَّ مِنْ وَضُوئِهِ، فَعَقَلْتُ. فَقُلْتُ: يَا رَسُولَ اللهِ، إِنَّمَا يَرِثُنِي كَلاَلَةٌ. فَنَزَلَتْ آيَةُ الْـمِيرَاثِ. فَقُلْتُ لِمُحَمَّدِ بْنِ الْـمُنْكَدِرِ: «يَسْتَفْتُونَكَ. قُلِ اللهُ يُفْتِيكُمْ فِي الْكَلاَلَةِ»؟ قَالَ: هَكَذَا أُنْزِلَتْ.

[3632–000]. (Dar al-Salam 3936) Isḥāq ibn Ibrāhīm narrated: al-Naḍr ibn Shumayl and Abu ʿĀmir al-ʿAqadī reported [H]. Also, Muhammad ibn al-Muthannā narrated; Wahb ibn Jarīr narrated; all from Shuʿbah; with this chain of transmission: **the same text. However, Wahb ibn Jarīr's narration says [in the last sentence]: 'The verse concerning stipulated shares was revealed'. And in the narration of al-Naḍr and al-ʿAqadī: 'The verse concerning shares was revealed'. None of them includes what Shuʿbah said to Ibn al-Munkadir.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا النَّضْرُ بْنُ شُمَيْلٍ، وَأَبُو عَامِرٍ الْعَقَدِيُّ ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ، كُلُّهُمْ عَنْ شُعْبَةَ، بِهَذَا الإِسْنَادِ. فِي حَدِيثِ وَهْبِ بْنِ جَرِيرٍ: فَنَزَلَتْ آيَةُ الْفَرَائِضِ. وَفِي حَدِيثِ النَّضْرِ وَالْعَقَدِيِّ: فَنَزَلَتْ آيَةُ الْفَرْضِ. وَلَيْسَ فِي رِوَايَةِ أَحَدٍ مِنْهُمْ قَوْلُ شُعْبَةَ لِابْنِ الْمُنْكَدِرِ.

[3633–9]. (Dar al-Salam 3937–3938) Muhammad ibn Abu Bakr al-Muqaddamī and Muhammad ibn al-Muthannā narrated (Ibn al-Muthannā's text): both said: Yaḥyā ibn Saʿīd narrated; Hishām narrated; Qatādah narrated; from Sālim ibn Abi al-Jaʿd; from Maʿdān ibn Abi Ṭalḥah; that **'ʿUmar ibn al-Khaṭṭāb gave the *khuṭbah* on a Friday. He mentioned the Prophet and then mentioned Abu Bakr, then said: "I shall leave nothing behind which is, to my mind, more important than *al-kalālah*. I never took up a matter with God's Messenger as often as I did the case of *al-kalālah*, and he was never hard on me more than he was in this case, so much that he even poked me with his finger in my chest and said: 'ʿUmar, is the summer verse, which is the**

last of Surah 4, Women, not sufficient for you? If I live, I shall give a verdict on it which will be upheld by the one who recites the Qur'an and the one who does not recite the Qur'an'."'

حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى (وَاللَّفْظُ لِابْنِ الْمُثَنَّى) قَالا: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، حَدَّثَنَا هِشَامٌ، حَدَّثَنَا قَتَادَةُ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ مَعْدَانَ بْنِ أَبِي طَلْحَةَ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ، خَطَبَ يَوْمَ جُمُعَةٍ، فَذَكَرَ نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَذَكَرَ أَبَا بَكْرٍ، ثُمَّ قَالَ: إِنِّي لاَ أَدَعُ بَعْدِي شَيْئًا أَهَمَّ عِنْدِي مِنَ الْكَلاَلَةِ. مَا رَاجَعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي شَيْءٍ مَا رَاجَعْتُهُ فِي الْكَلاَلَةِ، وَمَا أَغْلَظَ لِي فِي شَيْءٍ مَا أَغْلَظَ لِي فِيهِ، حَتَّى طَعَنَ بِإِصْبَعِهِ فِي صَدْرِي، وَقَالَ: «يَا عُمَرُ، أَلاَ تَكْفِيكَ آيَةُ الصَّيْفِ الَّتِي فِي آخِرِ سُورَةِ النِّسَاءِ»؟ وَإِنِّي إِنْ أَعِشْ، أَقْضِ فِيهَا بِقَضِيَّةٍ يَقْضِي بِهَا مَنْ يَقْرَأُ الْقُرْآنَ، وَمَنْ لاَ يَقْرَأُ الْقُرْآنَ.

Abu Bakr ibn Abi Shaybah narrated; Ismāʿīl ibn ʿUlayyah narrated; from Saʿīd ibn Abi ʿArūbah [H]. Also, Zuhayr ibn Ḥarb, Isḥāq ibn Ibrāhīm and Ibn Rāfiʿ narrated; from Shabābah ibn Sawwār; from Shuʿbah; both from Qatādah; with the same chain of transmission: **a similar text**.

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ، عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، ح. وَحَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ رَافِعٍ، عَنْ شَبَابَةَ بْنِ سَوَّارٍ، عَنْ شُعْبَةَ، كِلاَهُمَا عَنْ قَتَادَةَ، بِهَذَا الإِسْنَادِ نَحْوَهُ.

Text Explanation

In its various versions, the hadith in this chapter highlights the merit of visiting a sick person to enquire after his health, and to go walking if possible. When the Prophet saw Jābir unconscious, he sprinkled some of the water of his ablution on him and Jābir regained consciousness. This points out that it is good to seek the blessing of what is used by devout people and what they leave of food and drink, as well as joining them in a meal or drink. The hadith tells how the Prophet's blessing had a real effect on people. Some scholars cite this hadith as evidence that water used for ablution, whether it is *wudu* or *ghusl*, remains pure. This is contrary to Abu Yūsuf's view that such water is impure. Basing the view of the purity of such water on this hadith is questionable, because the Prophet might have sprinkled on Jābir some of the water that remained unused, but in response it may be said that the greatest blessing is in the water that touched the Prophet's body as he performed the ablution, but God knows best.

When Jābir came to, he asked the Prophet how he should divide his property among his heirs, but the Prophet did not answer him until the relevant verse outlining inheritance details was revealed. This shows that a will made by an ill person is valid, even though he may become unconscious at times. A condition for the validity of such a will is that it is made when the person concerned is fully conscious and in control of his mental faculties.

The hadith may be cited as evidence in support of the view that the Prophet could not give a ruling on the basis of reasoning, because he did not give an answer to Jābir's question. The majority of scholars agree that giving a ruling on the basis of reasoning, or *ijtihad*, was within the Prophet's jurisdiction. We have mentioned this more than once. They explain the lack of answer by the Prophet as indicating that he could not determine any ruling in this instance. He hoped that God would reveal the necessary rulings.

Hadith No. 3633 mentions what ʿUmar said during his speech: 'I shall leave nothing behind which is, to my mind, more important than *al-kalālah*.

I never took up a matter with God's Messenger as often as I did the case of *al-kalālah*, and he was never hard on me more than he was in this case, so much that he even poked me with his finger in my chest and said: "ʿUmar, is the summer verse, which is the last of Surah 4, Women, not sufficient for you?" If I live, I shall give a verdict on it which will be upheld by the one who recites the Qur'an and the one who does not recite the Qur'an'. The Prophet refers to this verse as the 'summer verse' because it was revealed during the summer. The last part of the hadith, 'If I live…' is ʿUmar's speech, not the Prophet's. He did not give a ruling on it at that time because he had not arrived at a final conclusion in the matter. Therefore, he delayed it until he had fully considered the related issues.

Perhaps the Prophet was hard on ʿUmar in this case because he feared that he and others would rely only on what is stated in clearly expressed statements, without exercising scholarly reasoning to arrive at rulings. God says in the Qur'an: 'If only they would refer such a matter to the Messenger and to those from among them entrusted with authority, those of them who are engaged in obtaining intelligence would know it'. (4: 83) Thus, using scholarly reasoning and discretion is one of the most important duties, because the definitive texts address only a small number of events. If *ijtihad*, or reasoning, is neglected, many new cases would be left without a ruling, but God knows best.

i. Related by al-Bukhari, 565, 6723 and 7309; Abu Dāwūd, 2886; al-Tirmidhī, 2097 and 3015; al-Nasā'ī in a shorter version, 1436 and 2728.

ii. Related by al-Bukhari, 4577.

iii. Related by al-Bukhari, 194, 5676 and 7643.

CHAPTER 3

THE LAST VERSE TO BE REVEALED

[3634–10]. (Dar al-Salam 3939) ʿAlī ibn Khashram narrated: Wakīʿ reported; from Ibn Abi Khālid; from Abu Isḥāq; from al-Barā'. He said: **'The last verse of the Qur'an to be revealed was: "They will ask you for a verdict. Say: 'God Himself gives you His ruling concerning the inheritance of a person who leaves no heir in the direct line'."' (4: 176)**

حَدَّثَنَا عَلِيُّ بْنُ خَشْرَمٍ، أَخْبَرَنَا وَكِيعٌ، عَنِ ابْنِ أَبِي خَالِدٍ، عَنْ أَبِي إِسْحَاقَ، عَنِ الْبَرَاءِ قَالَ: آخِرُ آيَةٍ أُنْزِلَتْ مِنَ الْقُرْآنِ: «يَسْتَفْتُونَكَ قُلِ اللهُ يُفْتِيكُمْ فِي الْكَلاَلَةِ».

[3635–11]. (Dar al-Salam 3940) Muhammad ibn al-Muthannā and Ibn Bashshār narrated:[i] both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Abu Isḥāq. He said: **'I heard al-Barā' ibn ʿĀzib say: "The last verse to be revealed was the one concerning the *kalālah*, and the last surah to be revealed was [the one starting with] *Brā'ah*".'**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ أَبِي إِسْحَاقَ قَالَ: سَمِعْتُ الْبَرَاءَ بْنَ عَازِبٍ يَقُولُ: آخِرُ آيَةٍ أُنْزِلَتْ آيَةُ الْكَلاَلَةِ وَآخِرُ سُورَةٍ أُنْزِلَتْ بَرَاءَةُ.

[3636–12]. (Dar al-Salam 3941) Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated: ʿĪsā (who is Ibn Yūnus) reported; Zakariyyā' narrated; from Abu Isḥāq; from al-Barā'; that **'the last surah to be revealed in full was Surah Repentance; and the last verse to be revealed was the one concerning the *kalālah*'.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ، أَخْبَرَنَا عِيسَى (وَهُوَ ابْنُ يُونُسَ)، حَدَّثَنَا زَكَرِيَّاءُ، عَنْ أَبِي إِسْحَاقَ، عَنِ الْبَرَاءِ، أَنَّ آخِرَ سُورَةٍ أُنْزِلَتْ تَامَّةً سُورَةُ التَّوْبَةِ، وَأَنَّ آخِرَ آيَةٍ أُنْزِلَتْ آيَةُ الْكَلاَلَةِ.

[3637–000]. (Dar al-Salam 3942) Abu Kurayb narrated: Yaḥyā (meaning Ibn Adam) narrated; ʿAmmār (who is Ibn Ruzayq) narrated; from Abu Isḥāq; from al-Barā': **the same text, except that he said: 'The last surah to be revealed complete…'.**

حَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا يَحْيَى (يَعْنِي ابْنَ آدَمَ)، حَدَّثَنَا عَمَّارٌ (وَهُوَ ابْنُ رُزَيْقٍ)، عَنْ أَبِي إِسْحَاقَ، عَنِ الْبَرَاءِ، بِمِثْلِهِ. غَيْرَ أَنَّهُ قَالَ: آخِرُ سُورَةٍ أُنْزِلَتْ كَامِلَةً.

[3638–13]. (Dar al-Salam 3943) ʿAmr al-Nāqid narrated:[ii] Abu Ahmad al-Zubayrī narrated; Mālik ibn Mighwal narrated; from Abu al-Safar; from al-Barā'. He said: **'The last verse to be revealed was: "They will ask you…".'**

حَدَّثَنَا عَمْرٌو النَّاقِدُ، حَدَّثَنَا أَبُو أَحْمَدَ الزُّبَيْرِيُّ، حَدَّثَنَا مَالِكُ بْنُ مِغْوَلٍ، عَنْ أَبِي السَّفَرِ، عَنِ الْبَرَاءِ قَالَ: آخِرُ آيَةٍ أُنْزِلَتْ: يَسْتَفْتُونَكَ.

Text Explanation

These hadiths mention that the last verse of the Qur'an to be revealed was the one speaking about the inheritance of *kalālah*, which is the last verse of Surah 4. There are different views about the linguistic derivation of this term and its meaning. The preferred meaning is that it refers to a deceased person, male or female, who has neither children nor parents to inherit from him or her. This is reported to be stated by Abu Bakr al-Ṣiddīq, ʿUmar, ʿAlī, Ibn Masʿūd, Zayd ibn Thābit and Ibn ʿAbbās (may God be pleased with them all). The Shia claim that a *kalālah* is a person who has no children, even though he may be survived by his father or grandfather. Thus, they gave a share of inheritance to the deceased's siblings together with his father. *Qadi* ʿIyāḍ said that this is also attributed to Ibn ʿAbbās, but this is a false report which cannot be confirmed from him. The truth is that he shared the view of other scholars. Some scholars claim that the unanimous view is that the *kalālah* is one who has neither offspring nor parents. Scholars differ regarding the case when a grandfather is one of the heirs: is this a *kalālah* case or not? Those who consider a grandfather a parent say that it is not *kalālah* case and the ones who do not consider him a parent say it is.

Qadi ʿIyāḍ said: If the deceased's heirs include a daughter of the deceased, the heirs are considered *kalālah* according to the majority of scholars, because the deceased's brothers and sisters as well as other *ʿaṣabah* relatives share in the inheritance alongside the deceased's daughter. Ibn ʿAbbās said that the deceased's sister does not inherit anything if he has a surviving daughter, because God says in this verse: 'If a man dies childless and has a sister…'. (4: 176) The same view is held by Dāwūd. The Shia claim that the presence of a daughter of the deceased prevents the case from being one of *kalālah*, because they assign no share of inheritance to the deceased's brother or sister. They give his daughter all his estate. They base this view on their understanding of the Qur'anic statement: 'If a man dies childless and has a sister, she shall inherit one-half of what he has left, just as he shall inherit all her property if she dies childless'. (4: 176) The

majority of scholars say that this verse means that the deceased's sister receives half her brother's property as her stipulated share but this only occurs if he dies childless. The absence of any children of the deceased is a condition for her having one-half as a stipulated share, not for her being an heir. The verse does not mention the non-existence of the deceased's father despite mentioning his being childless. Yet the deceased's siblings do not inherit if his father survives him. The omission is due to the fact that this is already known as a principle of the Islamic law of inheritance: heirs related to the deceased through someone do not inherit if that someone is alive. The only exception is that of the children of the deceased's mother: if she survives her son, his siblings through her only inherit alongside her.

Muslims are unanimous that the reference to brothers and sisters in the last verse of Surah 4, Women, means siblings having the same two parents or the same father when there is none with the same parents. They are also unanimous that the other reference to the inheritance of *kalālah*, refers to siblings through the mother only. It says: 'If a man or a woman has no heir in the direct line, but has a brother or a sister, then each of them shall inherit one-sixth; but if there shall be more, then they shall share in one-third'. (4: 12)

It should be noted that the rendering of *kalālah* as 'one with no heir in the direct line' means 'one with neither offspring nor parents', because this is the direct line of inheritance going down to offspring and up to parents.

i. Related by al-Bukhari, 4605 and 4654; Abu Dāwūd, 2888.

ii. Related by al-Tirmidhī, 3041.

CHAPTER 4

LEFT PROPERTY GOES TO HEIRS

[3639–14]. (Dar al-Salam 3944–3945) Zuhayr ibn Ḥarb narrated to me:[i] Abu Ṣafwān al-Umawī narrated; from Yūnus al-Aylī [H]. Also, Ḥarmalah ibn Yaḥyā narrated to me (his text). He said: ʿAbdullāh ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; from Abu Salamah ibn ʿAbd al-Raḥmān; from Abu Hurayrah; that **‘[The body of] a deceased person might be brought to God’s Messenger, and he has unsettled debt. The Prophet would ask: “Has he left enough to settle his debts?” If he was told that he has left debt settlement, he would offer the funeral prayer for him. Otherwise, he would say [to his companions]: “Offer the funeral prayer for your friend”. When God granted him victories and wealth, he said: “I have more claim on the believers than they have on their own selves. Whoever dies leaving an unsettled debt, I shall settle that, and whoever leaves property, it goes to his heirs”.’**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا أَبُو صَفْوَانَ الأُمَوِيُّ، عَنْ يُونُسَ الأَيْلِيِّ، ح. وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى (وَاللَّفْظُ لَهُ) قَالَ: أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ كَانَ يُؤْتَى بِالرَّجُلِ الْـمَيِّتِ عَلَيْهِ الدَّيْنُ فَيَسْأَلُ: «هَلْ تَرَكَ لِدَيْنِهِ مِنْ قَضَاءٍ»؟ فَإِنْ حُدِّثَ أَنَّهُ تَرَكَ وَفَاءً، صَلَّى عَلَيْهِ. وَإِلاَّ قَالَ: «صَلُّوا عَلَى صَاحِبِكُمْ». فَلَمَّا فَتَحَ اللهُ عَلَيْهِ الْفُتُوحَ

قَالَ: «أَنَا أَوْلَى بِالْـمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ. فَمَنْ تُوُفِّيَ وَعَلَيْهِ دَيْنٌ، فَعَلَيَّ قَضَاؤُهُ، وَمَنْ تَرَكَ مَالاً فَهُوَ لِوَرَثَتِهِ».

ʿAbd al-Malik ibn Shuʿayb ibn al-Layth narrated:[ii] my father narrated to me; from my grandfather; ʿUqayl narrated to me [H]. Also, Zuhayr ibn Ḥarb narrated to me; Yaʿqūb ibn Ibrāhīm narrated; Ibn Shihāb's nephew narrated [H]. And, Ibn Numayr narrated;[iii] my father narrated; Ibn Abi Dhi'b narrated; all of them from al-Zuhrī; with the same chain of transmission: **the same text.**

حَدَّثَنَا عَبْدُ الْـمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ، حَدَّثَنِي أَبِي، عَنْ جَدِّي، حَدَّثَنِي عُقَيْلٌ، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا ابْنُ أَخِي ابْنِ شِهَابٍ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا ابْنُ أَبِي ذِئْبٍ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ: هَذَا الْحَدِيثَ.

[3640–15]. (Dar al-Salam 3946) Muhammad ibn Rāfiʿ narrated to me: Shabābah narrated; he said: Warqā' narrated to me; from Abu al-Zinād; from al-Aʿraj; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **'By Him who holds Muhammad's soul in His hand, I have the first claim on every believer on earth: if any of you leaves [an unsettled] debt or young children, I am his guardian, and whoever of you leaves property, it goes to his heirs, whoever they are'.**

حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا شَبَابَةُ قَالَ: حَدَّثَنِي وَرْقَاءُ، عَنْ أَبِي الزِّنَادِ، عَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ، إِنْ عَلَى الأَرْضِ مِنْ مُؤْمِنٍ إِلاَّ أَنَا أَوْلَى النَّاسِ بِهِ. فَأَيُّكُمْ مَا تَرَكَ دَيْنًا أَوْ ضَيَاعًا فَأَنَا مَوْلاَهُ، وَأَيُّكُمْ تَرَكَ مَالاً فَإِلَى الْعَصَبَةِ، مَنْ كَانَ».

[3641–16]. (Dar al-Salam 3947) Muhammad ibn Rāfiʿ narrated: ʿAbd al-Razzāq narrated; Maʿmar reported; from Hammām ibn Munabbih. He said: This is what Abu Hurayrah narrated to us from God's Messenger (peace be upon him). He mentioned a number of hadiths including: **'And God's Messenger (peace be upon him) said: "It is in God's Book that I have more claim on the believers than all people. Whoever of you leaves [an unsettled] debt or young children, call on me; I am his guardian. And whoever of you leaves property, his property goes to his heirs, whoever they are".'**

حَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنْ هَمَّامِ بْنِ مُنَبِّهٍ قَالَ: هَذَا مَا حَدَّثَنَا أَبُو هُرَيْرَةَ عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ أَحَادِيثَ مِنْهَا: وَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَنَا أَوْلَى النَّاسِ بِالْمُؤْمِنِينَ فِي كِتَابِ اللهِ عَزَّ وَجَلَّ. فَأَيُّكُمْ مَا تَرَكَ دَيْنًا أَوْ ضَيْعَةً، فَادْعُونِي فَأَنَا وَلِيُّهُ. وَأَيُّكُمْ مَا تَرَكَ مَالاً فَلْيُؤْثَرْ بِمَالِهِ عَصَبَتُهُ، مَنْ كَانَ».

[3642–17]. (Dar al-Salam 3948) ʿUbaydullāh ibn Muʿādh al-ʿAnbarī narrated:[iv] my father narrated; Shuʿbah narrated; from ʿAdiy; that he heard Abu Ḥāzim narrating from Abu Hurayrah; from the Prophet (peace be upon him); that he said: **'Whoever leaves property, it goes to his heirs; and whoever leaves dependants, that is to us'.**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ، عَنْ عَدِيٍّ، أَنَّهُ سَمِعَ أَبَا حَازِمٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «مَنْ تَرَكَ مَالاً فَلِلْوَرَثَةِ، وَمَنْ تَرَكَ كَلاًّ فَإِلَيْنَا».

[3643–000].[v] Abu Bakr ibn Nāfiʿ narrated to me: Ghundar narrated [H]. Also, Zuhayr ibn Ḥarb narrated to me; ʿAbd al-Raḥmān (meaning Ibn Mahdī) narrated; both said: Shuʿbah narrated; with the same chain of transmission: **‘And whoever leaves dependants, I take care of them’.**

وَحَدَّثَنِيهِ أَبُو بَكْرِ بْنُ نَافِعٍ، حَدَّثَنَا غُنْدَرٌ، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ (يَعْنِي ابْنَ مَهْدِيٍّ) قَالا: حَدَّثَنَا شُعْبَةُ، بِهَذَا الإِسْنَادِ. غَيْرَ أَنَّ فِي حَدِيثِ غُنْدَرٍ: «وَمَنْ تَرَكَ كَلاًّ وَلِيتُهُ».

Text Explanation

Hadith No. 3639 mentions that in the early period in Madinah, when the body of a deceased person was brought in for the funeral prayer, the Prophet would not offer that prayer himself if he was told that the deceased had left an unsettled debt and did not have enough to settle it. The Prophet did so in order to encourage people to settle their debts as soon as they could, during their lifetimes. Everyone would be keen to do so in order not to miss out on a funeral prayer led by the Prophet in which he would pray for the forgiveness of the deceased.

If the deceased did not leave enough to settle his debt, the Prophet would say to his Companions: “Offer the funeral prayer for your friend”. This is an order to the Muslim community to offer the funeral prayer for every deceased Muslim. This prayer is a collective duty, which means that if some people offer it, the duty is discharged, but if no one does, the whole community is at fault.

Further to what al-Nawawī said, we may add that the Prophet’s attitude was meant to encourage the deceased person’s relatives and clansmen to

repay his debt so that the Prophet would offer the funeral prayer for him. This took place on more than one occasion.

The hadith mentions that when circumstances changed and the Muslim state was in better conditions, the Prophet said: 'I have more claim on the believers than they have on their own selves. Whoever dies leaving an unsettled debt, I shall settle that, and whoever leaves property, it goes to his heirs'.

It is said that the Prophet (peace be upon him) used to repay the debts left outstanding by deceased people from the fund kept specially for the welfare of Muslims. It is also said that he used to pay such debts from his own money. Some further say that it was a duty incumbent on the Prophet, but others say that he did so voluntarily. This difference of opinion represents two views held by scholars of our school and others. Our scholars also differ concerning the debt of a deceased person, with some saying that the debt must be repaid by the state, while others say that this is not a duty.

The hadith means that the Prophet declared that he would look after the interests of everyone in his community, during their lifetimes and after their deaths. He would pay the outstanding debt of a deceased person if his estate was insufficient. On the other hand, whatever property a person leaves behind goes to his heirs and the Prophet, or the Muslim state, would not take any portion of it. Moreover, if the deceased leaves dependants or young children and they do not have a source of income, then the Prophet would take care of them, paying their living expenses. This is clearly stated in hadith No. 3640: 'If any of you leaves [an unsettled] debt or young children, I am his guardian, and whoever of you leaves property, it goes to his heirs, whoever they are'.

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i. Related by al-Bukhari in a shorter version, 6731.

ii. Related by al-Bukhari, 2298 and 5371; al-Tirmidhī, 1070.

iii. Related by al-Nasā'ī, 1962; Ibn Mājah, 2415.

iv. Related by al-Bukhari, 2398 and 6763; Abu Dāwūd, 2955.

v. In Dar al-Salam's edition, this hadith is attached to the previous one.

BOOK
OF
GIFTS

CHAPTER 1

BUYING BACK ONE'S CHARITY

[3644–1]. (Dar al-Salam 3949) ʿAbdullāh ibn Maslamah ibn Qaʿnab narrated:[i] Mālik ibn Anas narrated; from Zayd ibn Aslam; from his father; that ʿUmar ibn al-Khaṭṭāb said: **'I gave someone a fine horse [to join a fight] for God's cause, but the one who took it neglected the horse. I thought he would be selling it cheaply and I asked God's Messenger (peace be upon him) about that. He said: "Do not buy it and do not take back your charity. The one who takes his charity back is like a dog swallowing its vomit back".'**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبٍ، حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: حَمَلْتُ عَلَى فَرَسٍ عَتِيقٍ فِي سَبِيلِ اللهِ، فَأَضَاعَهُ صَاحِبُهُ، فَظَنَنْتُ أَنَّهُ بَائِعُهُ بِرُخْصٍ، فَسَأَلْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ ذَلِكَ، فَقَالَ: «لا تَبْتَعْهُ، وَلا تَعُدْ فِي صَدَقَتِكَ. فَإِنَّ الْعَائِدَ فِي صَدَقَتِهِ كَالْكَلْبِ يَعُودُ فِي قَيْئِهِ».

[3645–000].[ii] Zuhayr ibn Ḥarb narrated: ʿAbd al-Raḥmān (meaning Ibn Mahdī) narrated; from Mālik ibn Anas; with the same chain of transmission: **He added: 'Do not buy it even if he gives it to you for a dirham'.**

وَحَدَّثَنِيهِ زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ (يَعْنِي ابْنَ مَهْدِيٍّ)، عَنْ مَالِكِ بْنِ أَنَسٍ بِهَذَا الإِسْنَادِ. وَزَادَ: «لا تَبْتَعْهُ، وَإِنْ أَعْطَاكَهُ بِدِرْهَمٍ».

[3646–2]. (Dar al-Salam 3950–3951) Ummayah ibn Bisṭām narrated to me: Yazīd (meaning Ibn Zurayʿ) narrated; Rawḥ (who is Ibn al-Qāsim) narrated; from Zayd ibn Aslam; from his father; from ʿUmar; that **'He donated a horse for fighting for God's cause. He found the horse in a poor condition with the one who took it, who was of limited means. ʿUmar wanted to buy it, but he went to God's Messenger (peace be upon him) and told him about it. The Prophet said: "Do not buy it, even if it is given to you for a dirham. The one who takes back his charity is like a dog swallowing back its vomit".'**

حَدَّثَنِي أُمَيَّةُ بْنُ بِسْطَامَ، حَدَّثَنَا يَزِيدُ (يَعْنِي ابْنَ زُرَيْعٍ)، حَدَّثَنَا رَوْحٌ (وَهُوَ ابْنُ الْقَاسِمِ)، عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، عَنْ عُمَرَ، أَنَّهُ حَمَلَ عَلَى فَرَسٍ فِي سَبِيلِ اللهِ، فَوَجَدَهُ عِنْدَ صَاحِبِهِ وَقَدْ أَضَاعَهُ. وَكَانَ قَلِيلَ الْـمَالِ. فَأَرَادَ أَنْ يَشْتَرِيَهُ، فَأَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ: «لا تَشْتَرِهِ وَإِنْ أُعْطِيتَهُ بِدِرْهَمٍ. فَإِنَّ مَثَلَ الْعَائِدِ فِي صَدَقَتِهِ، كَمَثَلِ الْكَلْبِ يَعُودُ فِي قَيْئِهِ».

Ibn Abi ʿUmar narrated: Sufyān narrated; from Zayd ibn Aslam; with the same chain of transmission; but the narration by Mālik and Rawḥ is longer and more complete.

وَحَدَّثَنَاهُ ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، عَنْ زَيْدِ بْنِ أَسْلَمَ، بِهَذَا الإِسْنَادِ. غَيْرَ أَنَّ حَدِيثَ مَالِكٍ وَرَوْحٍ أَتَمُّ وَأَكْثَرُ.

[3647–3]. (Dar al-Salam 3952–3953) Yaḥyā ibn Yaḥyā narrated:[iii] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **‘ʿUmar ibn al-Khaṭṭāb donated a horse for jihad for God’s cause, and he later found the horse being sold. He wanted to buy it, and he asked God’s Messenger (peace be upon him) about it. The Prophet said to him: “Do not buy it, and do not take your charity back”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى قَالَ: قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ حَمَلَ عَلَى فَرَسٍ فِي سَبِيلِ اللهِ، فَوَجَدَهُ يُبَاعُ. فَأَرَادَ أَنْ يَبْتَاعَهُ، فَسَأَلَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ ذَلِكَ فَقَالَ: «لا تَبْتَعْهُ وَلا تَعُدْ فِي صَدَقَتِكَ».

Qutaybah ibn Saʿīd and Ibn Rumḥ narrated; both from al-Layth ibn Saʿd [H]. Also, al-Muqaddamī and Muhammad ibn al-Muthannā narrated;[iv] both said: Yaḥyā (who is al-Qaṭṭān) narrated [H]. And, Ibn Numayr narrated; my father narrated [H]. Further, Abu Bakr ibn Abi Shaybah narrated; Abu Usāmah narrated; all of them from ʿUbaydullāh; both from Nāfiʿ; from Ibn ʿUmar; from the Prophet: **the same text as Mālik’s narration.**

وَحَدَّثَنَاهُ قُتَيْبَةُ بْنُ سَعِيدٍ، وَابْنُ رُمْحٍ، جَمِيعًا عَنِ اللَّيْثِ بْنِ سَعْدٍ، ح. وَحَدَّثَنَا الْمُقَدَّمِيُّ، وَمُحَمَّدُ بْنُ الْمُثَنَّى قَالا: حَدَّثَنَا يَحْيَى (وَهُوَ الْقَطَّانُ) ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَبُو أُسَامَةَ، كُلُّهُمْ عَنْ عُبَيْدِ اللهِ، كِلاَهُمَا عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، بِمِثْلِ حَدِيثِ مَالِكٍ.

[3648–4]. (Dar al-Salam 3954) Ibn Abi ʿUmar and ʿAbd ibn Ḥumayd narrated (ʿAbd’s text): ʿAbd al-Razzāq reported; Maʿmar

reported; from al-Zuhrī; from Sālim; from Ibn ʿUmar that **‘ʿUmar donated a mare for fighting for God’s cause, then he saw it being sold. He wanted to buy it, but he asked the Prophet. God’s Messenger (peace be upon him) said to him: “Do not take back your charity, ʿUmar”.’**

حَدَّثَنَا ابْنُ أَبِي عُمَرَ، وَعَبْدُ بْنُ حُمَيْدٍ (وَاللَّفْظُ لِعَبْدٍ) قَالَ: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ، أَنَّ عُمَرَ حَمَلَ عَلَى فَرَسٍ فِي سَبِيلِ اللهِ، ثُمَّ رَآهَا تُبَاعُ، فَأَرَادَ أَنْ يَشْتَرِيَهَا. فَسَأَلَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَعُدْ فِي صَدَقَتِكَ يَا عُمَرُ».

Text Explanation

The hadith means that ʿUmar gave a horse to someone who did not have a mount, so that he would be able to join a Muslim army fighting an enemy. Apparently, the horse was of superior quality, but the one who took it did not take proper care of it. Hence, ʿUmar thought of buying it back, but checked with the Prophet who told him not to do so, because this would represent taking back something he had given for God’s sake. The Prophet’s advice pointed to the better option, discouraging taking the horse back, even at a price. It does not, however, indicate a prohibition. Therefore, for a person to give something as a donation, zakat, indemnity, fulfilment of a vow or to discharge some other requirement or recommendation, and then to buy it back from the one who received it is discouraged. It is also discouraged to take it as a return gift, even if this is the recipient’s own choice. However, if the recipient dies and the one who gave it to him is his heir and inherits that gift, taking it is not discouraged. Furthermore, if the donation becomes the property of a third person, the original donor may buy it from this third party, without any element of discouragement. Some

scholars say that the Prophet's advice to ʿUmar indicates prohibition, rather than discouragement, but God knows best.

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i. Related by al-Bukhari, 1490, 2623, and in a shorter version 2636, 2970 and 3003; al-Nasā'ī, 2614; Ibn Mājah in a shorter version, 2390.

ii. In Dar al-Salam's edition, this hadith is attached to the previous one.

iii. Related by al-Bukhari, 2971 and 3002; Abu Dāwūd, 1593.

iv. Related by al-Bukhari, 2775.

CHAPTER 2

THE PROHIBITION OF TAKING BACK ONE'S GIFT AND CHARITY

[3649–5]. (Dar al-Salam 3955–3956) Ibrāhīm ibn Mūsā al-Rāzī and Isḥāq ibn Ibrāhīm narrated to me:[i] both said: ʿĪsā ibn Yūnus reported; al-Awzāʿī narrated; from Abu Jaʿfar Muhammad ibn ʿAlī, from Ibn al-Musayyib; from Ibn ʿAbbās; that the Prophet (peace be upon him) said: **'The one who goes back on his charity is like a dog who vomits, then takes back his vomit and eats it'.**

حَدَّثَنِي إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيُّ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، قَالا: أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، حَدَّثَنَا الأَوْزَاعِيُّ، عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ، عَنِ ابْنِ الْـمُسَيَّبِ، عَنِ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَثَلُ الَّذِي يَرْجِعُ فِي صَدَقَتِهِ كَمَثَلِ الْكَلْبِ، يَقِيءُ ثُمَّ يَعُودُ فِي قَيْئِهِ فَيَأْكُلُهُ».

Abu Kurayb Muhammad ibn al-ʿAlā' narrated; Ibn al-Mubārak reported; from al-Awzāʿī. He said: **I heard Muhammad ibn ʿAlī ibn al-Ḥusayn mentioning a similar text with the same chain of transmission.**

وَحَدَّثَنَاهُ أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلاَءِ، أَخْبَرَنَا ابْنُ الْـمُبَارَكِ، عَنِ الأَوْزَاعِيِّ قَالَ: سَمِعْتُ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ يَذْكُرُ بِهَذَا الإِسْنَادِ نَحْوَهُ.

Ḥajjāj ibn al-Shāʿir narrated: ʿAbd al-Ṣamad narrated; Ḥarb narrated; Yaḥyā (who is Ibn Abi Kathīr) narrated; ʿAbd al-Raḥmān ibn ʿAmr narrated to me; that Muhammad ibn Fāṭimah bint God's Messenger (peace be upon him) narrated to him, with the same chain of transmission: **a similar text.**

وَحَدَّثَنِيهِ حَجَّاجُ بْنُ الشَّاعِرِ، حَدَّثَنَا عَبْدُ الصَّمَدِ، حَدَّثَنَا حَرْبٌ، حَدَّثَنَا يَحْيَى (وَهُوَ ابْنُ أَبِي كَثِيرٍ)، حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ عَمْرٍو، أَنَّ مُحَمَّدَ ابْنَ فَاطِمَةَ بِنْتِ رَسُولِ اللهِ، صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، حَدَّثَهُ بِهَذَا الإِسْنَادِ: نَحْوَ حَدِيثِهِمْ.

[3650–6]. (Dar al-Salam 3957) Ḥārūn ibn Saʿīd al-Aylī and Ahmad ibn ʿĪsā narrated to me: both said: Ibn Wahb narrated; ʿAmr (who is Ibn al-Ḥārith) reported to me; from Bukayr; that he heard Saʿīd ibn al-Musayyib say: I heard Ibn ʿAbbās say: **'I heard God's Messenger (peace be upon him) say: "The one who gives something as a *ṣadaqah*, i.e., charity, and then goes back on his charity is like a dog who vomits then eats its vomit".'**

وَحَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، وَأَحْمَدُ بْنُ عِيسَى، قَالا: حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي عَمْرٌو (وَهُوَ ابْنُ الْحَارِثِ)، عَنْ بُكَيْرٍ، أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يَقُولُ: سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «إِنَّمَا مَثَلُ الَّذِي يَتَصَدَّقُ بِصَدَقَةٍ ثُمَّ يَعُودُ فِي صَدَقَتِهِ كَمَثَلِ الْكَلْبِ، يَقِيءُ ثُمَّ يَأْكُلُ قَيْأَهُ».

[3651–7]. (Dar al-Salam 3958–3959) Muhammad ibn al-Muthannā and Muhammad ibn Bashshār narrated: both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; I heard Qatādah narrating from Saʿīd ibn al-Musayyib; from Ibn ʿAbbās; from the Prophet (peace

be upon him); that he said: **‘The one who goes back on his gift is like one going back on his vomit’.**

وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ الْـمُثَنَّى، وَمُحَمَّدُ بْنُ بَشَّارٍ، قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، سَمِعْتُ قَتَادَةَ، يُحَدِّثُ عَنْ سَعِيدِ بْنِ الْـمُسَيَّبِ، عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ».

Muhammad ibn al-Muthannā narrated: Ibn Abi ʿAdiy narrated; from Saʿīd; from Qatādah; with the same chain of transmission: **the same text.**

وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3652–8]. (Dar al-Salam 3960) Isḥāq ibn Ibrāhīm narrated:[ii] al-Makhzūmī narrated; Wuhayb narrated; ʿAbdullāh ibn Ṭāwūs narrated; from his father; from Ibn ʿAbbās; from God’s Messenger (peace be upon him). He said: **“The one who goes back on his gift is like a dog who vomits then goes back on his vomit”.’**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا الْـمَخْزُومِيُّ، حَدَّثَنَا وُهَيْبٌ، حَدَّثَنَا عَبْدُ اللهِ بْنُ طَاوُسٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْعَائِدُ فِي هِبَتِهِ كَالْكَلْبِ يَقِيءُ ثُمَّ يَعُودُ فِي قَيْئِهِ».

Text Explanation

This hadith, in its various versions, clearly forbids going back on one’s gift or charity after it has been given over and taken by the recipient. This is understood to refer to what is given to someone who is not a relative. If a

person makes a gift to his own child or grandchild, or even lower, he may take his gift back, as clearly stated in the hadith narrated by al-Nuʿmān ibn Bashīr.

No going back however, is applicable to gifts given to brothers, sisters, uncles or other relatives. This the view of the Shāfiʿī School, and this view is endorsed by Mālik and al-Awzāʿī. Abu Ḥanīfah and others say that anyone may go back on his gift, except a son and an immediate relative.

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i. Related by al-Bukhari in similar wording, 2621, Abu Dāwūd in similar wording, 3538; al-Nasā'ī, 3695, 3696, 3697, 3698 and 3699; Ibn Mājah in similar wording, 2385.

ii. Related by al-Bukhari, 2589; al-Nasā'ī, 3693 and 3703.

CHAPTER 3

FAVOURITISM IN GIFTS TO ONE'S CHILDREN

[3653–9]. (Dar al-Salam 3961) Yaḥyā ibn Yaḥyā narrated: he said:[i] I read out to Mālik; from Ibn Shihāb; from Ḥumayd ibn ʿAbd al-Raḥmān and from Muhammad ibn al-Nuʿmān ibn Bashīr; both narrating from al-Nuʿmān ibn Bashīr; that **'He said that his father took him to God's Messenger (peace be upon him) and said: "I have given this son of mine a slave I had". God's Messenger said: "Have you given everyone of your children a similar gift?" He said: "No". God's Messenger (peace be upon him) said: "Then take it back".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، وَعَنْ مُحَمَّدِ بْنِ النُّعْمَانِ بْنِ بَشِيرٍ يُحَدِّثَانِهِ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ أَنَّهُ قَالَ: إِنَّ أَبَاهُ أَتَى بِهِ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلاَمًا كَانَ لِي. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَكُلَّ وَلَدِكَ نَحَلْتَهُ مِثْلَ هَذَا»؟ فَقَالَ لا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «فَارْجِعْهُ».

[3654–10]. (Dar al-Salam 3962) Yaḥyā ibn Yaḥyā narrated: Ibrāhīm ibn Saʿd reported; from Ibn Shihāb; from Ḥumayd ibn ʿAbd al-Raḥmān and Muhammad ibn al-Nuʿmān; from al-Nuʿmān ibn Bashīr. He said: **'My father took me to God's Messenger (peace**

be upon him) and said: “I have given this son of mine a slave”. He said: “Have you given [the same] to all your sons?” He said: “No”. [The Prophet] said: “Then take it back”.’

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنِ ابْنِ شِهَابٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ وَمُحَمَّدِ بْنِ النُّعْمَانِ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: أَتَى بِي أَبِي إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلاَمًا. فَقَالَ: «أَكُلَّ بَنِيكَ نَحَلْتَ». قَالَ لا. قَالَ: «فَارْدُدْهُ».

[3655–11]. (Dar al-Salam 3963) Abu Bakr ibn Abi Shaybah, Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated: from Ibn ʿUyaynah [H]. Also, Qutaybah and Ibn Rumḥ narrated; from al-Layth ibn Saʿd [H]. And, Ḥarmalah ibn Yaḥyā narrated to me: Ibn Wahb reported; Yūnus reported to me [H]. Further, Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated; both said: ʿAbd al-Razzāq reported; Maʿmar reported; all from al-Zuhrī; with this chain of transmission: **the same text except that in Yūnus and Maʿmar’s version: ‘all your sons’, while in al-Layth and Ibn ʿUyaynah’s narration: ‘all your children’.**

Also in al-Layth’s narration from Muhammad ibn al-Nuʿmān and Ḥumayd ibn ʿAbd al-Raḥmān: **‘that ‘Bashīr brought al-Nuʿmān’.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ، عَنِ ابْنِ عُيَيْنَةَ، ح. وَحَدَّثَنَا قُتَيْبَةُ، وَابْنُ رُمْحٍ، عَنِ اللَّيْثِ بْنِ سَعْدٍ، ح. وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا ابْنُ وَهْبٍ قَالَ: أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَبْدُ بْنُ حُمَيْدٍ، قَالا: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ. أَمَّا يُونُسُ وَمَعْمَرٌ فَفِي

حَدِيثِهِمَا: «أَكُلَّ بَنِيكَ». وَفِي حَدِيثِ اللَّيْثِ وَابْنِ عُيَيْنَةَ «أَكُلَّ وَلَدِكَ». وَرِوَايَةُ اللَّيْثِ عَنْ مُحَمَّدِ بْنِ النُّعْمَانِ وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ بَشِيرًا جَاءَ بِالنُّعْمَانِ.

[3656–12]. (Dar al-Salam 3964) Qutaybah ibn Saʿīd narrated:[ii] Jarīr narrated; from Hishām ibn ʿUrwah; from his father; he said: al-Nuʿmān ibn Bashīr narrated. He said that **'His father had given him a slave. The Prophet said to him: "What slave is this?" He said: "My father has given it to me". The Prophet said [to my father]: "Have you given all his brothers the same as you have given this one?" He said: "No". The Prophet said: "Then take him back".'**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا جَرِيرٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ قَالَ: حَدَّثَنَا النُّعْمَانُ بْنُ بَشِيرٍ، قَالَ وَقَدْ أَعْطَاهُ أَبُوهُ غُلاَمًا، فَقَالَ لَهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَا هَذَا الْغُلاَمُ»؟ قَالَ: أَعْطَانِيهِ أَبِي. قَالَ: «فَكُلَّ إِخْوَتِهِ أَعْطَيْتَهُ كَمَا أَعْطَيْتَ هَذَا»؟ قَالَ لا. قَالَ: «فَرُدَّهُ».

[3657–13]. (Dar al-Salam 3965) Abu Bakr ibn Abi Shaybah narrated:[iii] ʿAbbād ibn al-ʿAwwām narrated; from Ḥuṣayn; from al-Shaʿbī. He said: I heard al-Nuʿmān ibn Bashīr [H]. Also, Yaḥyā ibn Yaḥyā narrated (his text); Abu al-Aḥwaṣ reported; from Ḥuṣayn; from al-Shaʿbī; from al-Nuʿmān ibn Bashīr. He said: **'My father gifted me some of his property. My mother, ʿAmrah bint Rawāḥah, said: "I shall not be happy until you have God's Messenger (peace be upon him) as a witness". My father went to the Prophet to ask him to be a witness to my gift. God's Messenger (peace be upon him) said to him: "Have you done the same to all your children?" He said: "No". The Prophet**

said: “Fear God and maintain fairness to your children”. My father came back and took that gift back.’

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبَّادُ بْنُ الْعَوَّامِ، عَنْ حُصَيْنٍ، عَنِ الشَّعْبِيِّ قَالَ: سَمِعْتُ النُّعْمَانَ بْنَ بَشِيرٍ، ح. وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى (وَاللَّفْظُ لَهُ)، أَخْبَرَنَا أَبُو الأَحْوَصِ، عَنْ حُصَيْنٍ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: تَصَدَّقَ عَلَيَّ أَبِي بِبَعْضِ مَالِهِ، فَقَالَتْ أُمِّي، عَمْرَةُ بِنْتُ رَوَاحَةَ، لا أَرْضَى حَتَّى تُشْهِدَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَانْطَلَقَ أَبِي إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لِيُشْهِدَهُ عَلَى صَدَقَتِي. فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَفَعَلْتَ هَذَا بِوَلَدِكَ كُلِّهِمْ»؟ قَالَ لا. قَالَ: «اتَّقُوا اللهَ وَاعْدِلُوا فِي أَوْلاَدِكُمْ». فَرَجَعَ أَبِي فَرَدَّ تِلْكَ الصَّدَقَةَ.

[3658–14]. (Dar al-Salam 3966) Abu Bakr ibn Abi Shaybah narrated: ʿAlī ibn Mushir narrated; from Abu Ḥayyān; from al-Shaʿbī; from al-Nuʿmān ibn Bashīr [H]. Also, Muhammad ibn ʿAbdullāh ibn Numayr narrated (his text); Muhammad ibn Bishr narrated; Abu Ḥayyān al-Taymī narrated; from al-Shaʿbī; al-Nuʿmān ibn Bashīr narrated to me; that **‘his mother, bint Rawāḥah, requested his father to give some gift to her son, but he procrastinated for a year, then he felt inclined. She said: “I shall not be happy unless you have God’s Messenger (peace be upon him) as a witness to what you are gifting to my son”. My father took me by hand, as I was a young lad. He went to God’s Messenger (peace be upon him) and said: “Messenger of God, this child’s mother, bint Rawāḥah, would like me to request you to witness what I have gifted to her son”. The Prophet said to him: “Bashīr, do you have other children?” He said: “Yes”. The Prophet said: “Have you gifted them all the same as you have**

gifted this one?” He said: “No”. He said: “Then do not ask me to be a witness, as I do not witness unfairness”.’

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ أَبِي حَيَّانَ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ (وَاللَّفْظُ لَهُ)، حَدَّثَنَا مُحَمَّدُ بْنُ بِشْرٍ، حَدَّثَنَا أَبُو حَيَّانَ التَّيْمِيُّ، عَنِ الشَّعْبِيِّ، حَدَّثَنِي النُّعْمَانُ بْنُ بَشِيرٍ أَنَّ أُمَّهُ، بِنْتَ رَوَاحَةَ، سَأَلَتْ أَبَاهُ بَعْضَ الْـمَوْهِبَةِ مِنْ مَالِهِ لِابْنِهَا، فَالْتَوَى بِهَا سَنَةً، ثُمَّ بَدَا لَهُ. فَقَالَتْ: لا أَرْضَى حَتَّى تُشْهِدَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى مَا وَهَبْتَ لِابْنِي. فَأَخَذَ أَبِي بِيَدِي، وَأَنَا يَوْمَئِذٍ غُلاَمٌ، فَأَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللهِ، إِنَّ أُمَّ هَذَا، بِنْتَ رَوَاحَةَ، أَعْجَبَهَا أَنْ أُشْهِدَكَ عَلَى الَّذِي وَهَبْتُ لِابْنِهَا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «يَا بَشِيرُ، أَلَكَ وَلَدٌ سِوَى هَذَا»؟ قَالَ نَعَمْ. فَقَالَ: «أَكُلَّهُمْ وَهَبْتَ لَهُ مِثْلَ هَذَا»؟ قَالَ لا. قَالَ: «فَلا تُشْهِدْنِي إِذًا، فَإِنِّي لا أَشْهَدُ عَلَى جَوْرٍ».

[3659–15]. (Dar al-Salam 3967) Ibn Numayr narrated: my father narrated; Ismāʿīl narrated; from al-Shaʿbī; from al-Nuʿmān ibn Bashīr that **‘God’s Messenger said: “Do you have other children?” He said: “Yes”. He said: “Have you given them all the same as [you have given] this one?” He said: “No”. The Prophet said: “I do not witness unfairness”.’**

حَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنِي أَبِي، حَدَّثَنَا إِسْمَاعِيلُ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَلَكَ بَنُونَ سِوَاهُ»؟ قَالَ نَعَمْ. قَالَ: «فَكُلَّهُمْ أَعْطَيْتَ مِثْلَ هَذَا»؟ قَالَ لا. قَالَ: «فَلاَ أَشْهَدُ عَلَى جَوْرٍ».

[3660–16]. (Dar al-Salam 3968) Isḥāq ibn Ibrāhīm narrated: Jarīr reported; from ʿĀṣim al-Aḥwal; from al-Shaʿbī; from al-Nuʿmān

ibn Bashīr; that **‘God’s Messenger (peace be upon him) said to his father: “Do not ask me to witness unfairness”.’**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا جَرِيرٌ، عَنْ عَاصِمٍ الأَحْوَلِ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ لأَبِيهِ: «لا تُشْهِدْنِي عَلَى جَوْرٍ».

[3661–17]. (Dar al-Salam 3969) Muhammad ibn al-Muthannā narrated: ʿAbd al-Wahhāb and ʿAbd al-Aʿlā narrated [H]. Also, Isḥāq ibn Ibrāhīm and Yaʿqūb al-Dawraqī narrated; all from Ibn ʿUlayyah (Yaʿqūb’s text). He said: Ismāʿīl ibn Ibrāhīm narrated; from Dāwūd ibn Abi Hind; from al-Shaʿbī; from al-Nuʿmān ibn Bashīr. He said: **‘My father carried me to God’s Messenger (peace be upon him) and said: “Messenger of God, be a witness that I have gifted al-Nuʿmān such and such of my property”. The Prophet said: “Have you gifted all your children as you have gifted al-Nuʿmān?” He said: “No”. The Prophet said: “Then call someone else to witness”. He then said: “Will it not please you that they all will be equally dutiful to you?” He said: “Yes, indeed”. The Prophet said: “Then, do not”.’**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا عَبْدُ الْوَهَّابِ، وَعَبْدُ الأَعْلَى، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَيَعْقُوبُ الدَّوْرَقِيُّ، جَمِيعًا عَنِ ابْنِ عُلَيَّةَ (وَاللَّفْظُ لِيَعْقُوبَ) قَالَ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، عَنْ دَاوُدَ بْنِ أَبِي هِنْدٍ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: انْطَلَقَ بِي أَبِي يَحْمِلُنِي إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللهِ اشْهَدْ أَنِّي قَدْ نَحَلْتُ النُّعْمَانَ كَذَا وَكَذَا مِنْ مَالِي. فَقَالَ: «أَكُلَّ بَنِيكَ قَدْ نَحَلْتَ مِثْلَ مَا نَحَلْتَ النُّعْمَانَ»؟ قَالَ لا. قَالَ: «فَأَشْهِدْ عَلَى هَذَا غَيْرِي». ثُمَّ قَالَ: «أَيَسُرُّكَ أَنْ يَكُونُوا إِلَيْكَ فِي الْبِرِّ سَوَاءً»؟ قَالَ بَلَى. قَالَ: «فَلا إِذًا».

[3662–18]. (Dar al-Salam 3970) Ahmad ibn ʿUthmān al-Nawfalī narrated: Azhar narrated; Ibn ʿAwn narrated; from al-Shaʿbī; from al-Nuʿmān ibn Bashīr. He said: **‘My father gave me a gift then took me to God’s Messenger (peace be upon him) so that he would witness it. The Prophet asked: “Have you given the same to all your children?” He said: “No”. The Prophet said: “Do you not want them to be as dutiful as you want this one to be?” He said: “Yes”. The Prophet said: “Then I shall not witness”.’**

Ibn ʿAwn said: **‘I narrated it to Muhammad, and he said: “We narrate that he [meaning the Prophet] said: ‘Ensure fairness among your children’.”’**

حَدَّثَنَا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ، حَدَّثَنَا أَزْهَرُ، حَدَّثَنَا ابْنُ عَوْنٍ، عَنِ الشَّعْبِيِّ، عَنِ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: نَحَلَنِي أَبِي نُحْلاً، ثُمَّ أَتَى بِي إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لِيُشْهِدَهُ، فَقَالَ: «أَكُلَّ وَلَدِكَ أَعْطَيْتَهُ هَذَا»؟. قَالَ لا. قَالَ: «أَلَيْسَ تُرِيدُ مِنْهُمُ الْبِرَّ مِثْلَ مَا تُرِيدُ مِنْ ذَا»؟ قَالَ بَلَى. قَالَ: «فَإِنِّي لاَ أَشْهَدُ».

قَالَ ابْنُ عَوْنٍ: فَحَدَّثْتُ بِهِ مُحَمَّدًا، فَقَالَ: إِنَّمَا تَحَدَّثْنَا أَنَّهُ قَالَ: «قَارِبُوا بَيْنَ أَوْلاَدِكُمْ».

[3663–19]. (Dar al-Salam 3971) Ahmad ibn ʿAbdullāh ibn Yūnus narrated:[iv] Zuhayr narrated; Abu al-Zubayr narrated; from Jābir. He said: **‘Bashīr’s wife said [to him]: “Give my son your slave as a gift and let God’s Messenger (peace be upon him) be my witness”. He went to God’s Messenger and said: “The daughter of so-and-so [meaning his wife] has asked me to gift him my slave and said: ‘Let God’s Messenger (peace be upon him) be a witness’.” The Prophet asked: “Does he have siblings?” He said: “Yes”. The Prophet said: “Have you given everyone the**

same as you have given him?" He said: "No". The Prophet said: "Then this is not right, and I do not witness anything that is not right".'

حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ اللهِ بْنِ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: قَالَتِ امْرَأَةُ بَشِيرٍ: انْحَلِ ابْنِي غُلاَمَكَ، وَأَشْهِدْ لِي رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَأَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: إِنَّ ابْنَةَ فُلاَنٍ سَأَلَتْنِي أَنْ أَنْحَلَ ابْنَهَا غُلاَمِي، وَقَالَتْ أَشْهِدْ لِي رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَقَالَ: «أَلَهُ إِخْوَةٌ»؟ قَالَ نَعَمْ. قَالَ: «أَفَكُلَّهُمْ أَعْطَيْتَ مِثْلَ مَا أَعْطَيْتَهُ»؟ قَالَ لا. قَالَ: «فَلَيْسَ يَصْلُحُ هَذَا. وَإِنِّي لاَ أَشْهَدُ إِلاَّ عَلَى حَقٍّ».

Text Explanation

This hadith in its many versions shows that a parent must give his children equal gifts, giving each one the same as the other, without preferential treatment to any. Sons and daughters should be given equal gifts. Some of our scholars suggest that a son is given as much as two daughters, but the correct and well-known view is that equality should be maintained between sons and daughters as clearly apparent in the hadith.

If a father favours some of his children, or gives a gift to some but not the others, his action is reprehensible, i.e., *makrūh*, but not forbidden, and the gift is valid. This is the view of al-Shāfiʿī, Mālik and Abu Ḥanīfah. On the other hand, Ṭāwūs, ʿUrwah, Mujāhid, al-Thawrī, Ahmad, Isḥāq and Dāwūd said that it is forbidden. In support of their view, they cite the Prophet's statement in hadiths No. 3658 and No. 3659: 'I do not witness unfairness'. They also cite other expressions given in the hadiths. Al-Shāfiʿī and scholars adopting the same view cite in support the Prophet's words in hadith No. 3661: 'Call someone else to witness'. They say that had the action been forbidden or invalid, the Prophet would not have said this to Bashīr. If it is said that this is a form of threat, we respond that the standard

way of expression by the Legislator is different. The formula used by the Prophet, i.e., ‘call someone else’, may imply a duty or a recommendation, and if both are not possible, then it implies permissibility.

That the Prophet said, ‘I do not witness unfairness’, does not imply that it is forbidden. Unfairness means moving away from what is fair and equitable. Whatever is not well balanced is unfair, whether it is forbidden or reprehensible. As we have mentioned, that the Prophet said, ‘call someone else to witness’, implies that it is not forbidden. Therefore, unfairness must be understood as implying discouragement, not prohibition.

The hadith shows that giving some of one’s children a gift, but not the others, is valid. It also shows that if the parent does not give the rest of his children equal gifts, he is recommended to take back what he has given the first ones, but this is not obligatory. Our scholars say that a father is encouraged to give his other children similar gifts to what he has given the first one, but if he does not, then he is advised to reclaim the gift from the first one, although this is not obligatory. The hadith further shows that it is permissible for a parent to take back a gift he has given to a child, but God knows best.

In hadith No. 3662, the Prophet says: ‘Ensure fairness among your children’. This means: treating them equally, in giving gifts and in the value of such gifts.

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i. Related by al-Bukhari, 2586; al-Tirmidhī, 1367; al-Nasā’ī, 3674, 3675, 3676 and 3677; Ibn Mājah, 2376.

ii. Related by Abu Dāwūd, 3543; al-Nasā’ī in similar wording, 3678.

iii. Related by al-Bukhari, 2587 and 2650; Abu Dāwūd, 3542; al-Nasā’ī in a shorter version, 3681 and also 3682, 3683 and 3684; Ibn Mājah, 2375.

iv. Related by Abu Dāwūd, 3545.

CHAPTER 4

A GIFT FOR LIFE

[3664–20]. (Dar al-Salam 3972) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Ibn Shihāb; from Abu Salamah ibn ʿAbd al-Raḥmān; from Jābir ibn ʿAbdullāh; that **‘God’s Messenger (peace be upon him) said: “Whoever is given a life gift [i.e., *ʿumrā*] for himself and his offspring, it belongs to the recipient. It does not revert to the one who has given it, because he has given something which entails inheritance”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا رَجُلٍ أُعْمِرَ عُمْرَى لَهُ وَلِعَقِبِهِ، فَإِنَّهَا لِلَّذِي أُعْطِيَهَا. لاَ تَرْجِعُ إِلَى الَّذِي أَعْطَاهَا، لأَنَّهُ أَعْطَى عَطَاءً وَقَعَتْ فِيهِ الْمَوَارِيثُ».

[3665–21]. (Dar al-Salam 3973) Yaḥyā ibn Yaḥyā and Muhammad ibn Rumḥ narrated: both said: al-Layth reported [H]. Also, Qutaybah narrated: Layth narrated; from Ibn Shihāb; from Abu Salamah; from Jābir ibn ʿAbdullāh. He said: **‘I heard God’s Messenger (peace be upon him) say: “Whoever gives a life gift to someone and his offspring, his word surrenders his right to it. It belongs to the one given it and to his offspring”.’**

However, Yaḥyā said at the beginning of his narration: **‘Whoever is given a life gift, it belongs to him and his offspring’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَمُحَمَّدُ بْنُ رُمْحٍ، قَالا: أَخْبَرَنَا اللَّيْثُ، ح. وَحَدَّثَنَا قُتَيْبَةُ، حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ أَنَّهُ قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ أَعْمَرَ رَجُلاً عُمْرَى لَهُ وَلِعَقِبِهِ، فَقَدْ قَطَعَ قَوْلُهُ حَقَّهُ فِيهَا. وَهِيَ لِمَنْ أُعْمِرَ وَلِعَقِبِهِ». غَيْرَ أَنَّ يَحْيَى قَالَ فِي أَوَّلِ حَدِيثِهِ: «أَيُّمَا رَجُلٍ أُعْمِرَ عُمْرَى فَهِيَ لَهُ وَلِعَقِبِهِ».

[3666–22]. (Dar al-Salam 3974) ʿAbd al-Raḥmān ibn Bishr al-ʿAbdī narrated to me: ʿAbd al-Razzāq reported; Ibn Jurayj reported; Ibn Shihāb reported to me; about the *ʿumrā* and its practice, from the hadith narrated by Abu Salamah ibn ʿAbd al-Raḥmān; that Jābir ibn ʿAbdullāh al-Anṣārī reported; that **‘God’s Messenger (peace be upon him) said: “Whoever gives someone a life gift for him and his offspring, saying: I give it to you and your offspring, for as long as any of you is alive, it belongs to the recipient. It does not revert to its original owner, because he has given a gift that entails inheritance”.’**

حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ بِشْرٍ الْعَبْدِيُّ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي ابْنُ شِهَابٍ، عَنِ الْعُمْرَى وَسُنَّتِهَا، عَنْ حَدِيثِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، أَنَّ جَابِرَ بْنَ عَبْدِ اللهِ الأَنْصَارِيَّ أَخْبَرَهُ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا رَجُلٍ أَعْمَرَ رَجُلاً عُمْرَى لَهُ وَلِعَقِبِهِ، فَقَالَ قَدْ أَعْطَيْتُكَهَا وَعَقِبَكَ مَا بَقِيَ مِنْكُمْ أَحَدٌ. فَإِنَّهَا لِمَنْ أُعْطِيَهَا. وَإِنَّهَا لاَ تَرْجِعُ إِلَى صَاحِبِهَا، مِنْ أَجْلِ أَنَّهُ أَعْطَى عَطَاءً وَقَعَتْ فِيهِ الْمَوَارِيثُ».

[3667–23]. (Dar al-Salam 3975) Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated (ʿAbd's text): both said: ʿAbd al-Razzāq reported; Maʿmar reported; from al-Zuhrī; from Abu Salamah; from Jābir. He said: **'The *ʿumrā* or life gift God's Messenger has approved is that in which the man says: "This is for you and your offspring". If he says: "It is for you throughout your life", it will revert to its original owner. Maʿmar said: "al-Zuhrī used to give a fatwa on this basis".'**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَبْدُ بْنُ حُمَيْدٍ، (وَاللَّفْظُ لِعَبْدٍ) قَالا: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرٍ قَالَ: إِنَّمَا الْعُمْرَى الَّتِي أَجَازَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يَقُولَ: هِيَ لَكَ وَلِعَقِبِكَ. فَأَمَّا إِذَا قَالَ هِيَ لَكَ مَا عِشْتَ. فَإِنَّهَا تَرْجِعُ إِلَى صَاحِبِهَا. قَالَ مَعْمَرٌ: وَكَانَ الزُّهْرِيُّ يُفْتِي بِهِ.

[3668–24]. (Dar al-Salam 3976) Muhammad ibn Rāfiʿ narrated: Ibn Abi Fudayk narrated; from Ibn Abi Dhi'b; from Ibn Shihāb; from Abu Salamah ibn ʿAbd al-Raḥmān; from Jābir (who is Ibn ʿAbdullāh); that **'God's Messenger (peace be upon him) ruled in the case of one who is given a life gift for himself and his offspring that it belongs to him fully, and that the giver cannot stipulate a condition or exception'.**

Abu Salamah said: **'It is so, because he has given a gift that entails inheritance, and therefore the inheritance annuls his condition'.**

حَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، عَنِ ابْنِ أَبِي ذِئْبٍ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ جَابِرٍ (وَهُوَ ابْنُ عَبْدِ اللهِ)، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ

قَضَى فِيمَنْ أُعْمِرَ عُمْرَى لَهُ وَلِعَقِبِهِ. فَهِيَ لَهُ بَتْلَةً، لا يَجُوزُ لِلْـمُعْطِي فِيهَا شَرْطٌ وَلا ثُنْيَا.

قَالَ أَبُو سَلَمَةَ: «لأَنَّهُ أَعْطَى عَطَاءً وَقَعَتْ فِيهِ الْـمَوَارِيثُ، فَقَطَعَتِ الْـمَوَارِيثُ شَرْطَهُ».

[3669–25]. (Dar al-Salam 3977–3979) ʿUbaydullāh ibn ʿUmar al-Qawārīrī narrated: Khālid ibn al-Ḥārith narrated; Hishām narrated; from Yaḥyā ibn Abi Kathīr; Abu Salamah ibn ʿAbd al-Raḥmān narrated to me. He said: I heard Jābir ibn ʿAbdullāh say: **‘God’s Messenger (peace be upon him) said: “A life gift belongs to the one to whom it is given”.’**

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ، حَدَّثَنَا هِشَامٌ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ قَالَ: سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الْعُمْرَى لِمَنْ وُهِبَتْ لَهُ».

Muhammad ibn al-Muthannā narrated: Muʿādh ibn Hishām narrated; my father narrated to me; from Yaḥyā ibn Abi Kathīr; Abu Salamah ibn ʿAbd al-Raḥmān narrated; from Jābir ibn ʿAbdullāh; that the Prophet of God (peace be upon him) said: **the same text.**

وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ، حَدَّثَنِي أَبِي، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، حَدَّثَنَا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ بِمِثْلِهِ.

Ahmad ibn Yūnus narrated; Zuhayr narrated; Abu al-Zubayr narrated; from Jābir: **the same text, attributing it to the Prophet (peace be upon him).**

حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ، يَرْفَعُهُ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3670–26]. (Dar al-Salam 3980) Yaḥyā ibn Yaḥyā narrated (his text): Abu Khaythamah reported; from Abu al-Zubayr; from Jābir. He said: **‘God’s Messenger (peace be upon him) said: “Hold on to your property and do not spoil them. Whoever gives a life gift, it belongs to the one who is given it during his life and after his death, and to his offspring”.’**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى (وَاللَّفْظُ لَهُ)، أَخْبَرَنَا أَبُو خَيْثَمَةَ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَمْسِكُوا عَلَيْكُمْ أَمْوَالَكُمْ، وَلاَ تُفْسِدُوهَا. فَإِنَّهُ مَنْ أَعْمَرَ عُمْرَى فَهِيَ لِلَّذِي أُعْمِرَهَا حَيًّا وَمَيِّتًا، وَلِعَقِبِهِ».

[3671–27]. (Dar al-Salam 3981) Abu Bakr ibn Abi Shaybah narrated:[ii] Muhammad ibn Bishr narrated; Ḥajjāj ibn Abi ʿUthmān narrated [H]. Also, Abu Bakr ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated; from Wakīʿ; from Sufyān [H]. And, ʿAbd al-Wārith ibn ʿAbd al-Ṣamad narrated; my father narrated; from my grandfather; from Ayyūb; all these from Abu al-Zubayr; from Jābir; from the Prophet (peace be upon him): **the same meaning as Abu Khaythamah’s narration.**

Ayyūb’s narration adds: **‘The Anṣār made life gifts to the Muhājirīn. Therefore, the Prophet said: “Hold on to your property”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا مُحَمَّدُ بْنُ بِشْرٍ، حَدَّثَنَا حَجَّاجُ بْنُ أَبِي عُثْمَانَ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، عَنْ وَكِيعٍ، عَنْ سُفْيَانَ، ح. وَحَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ، حَدَّثَنِي أَبِي، عَنْ جَدِّي، عَنْ أَيُّوبَ، كُلُّ هَؤُلاَءِ عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، بِمَعْنَى حَدِيثِ أَبِي خَيْثَمَةَ. وَفِي حَدِيثِ أَيُّوبَ مِنَ الزِّيَادَةِ قَالَ: جَعَلَ الأَنْصَارُ يُعْمِرُونَ الْمُهَاجِرِينَ، فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَمْسِكُوا عَلَيْكُمْ أَمْوَالَكُمْ».

[3672–28]. (Dar al-Salam 3982) Muhammad ibn Rāfiʿ and Isḥāq ibn Manṣūr narrated to me (Ibn Rāfiʿ's text):[iii] both said: ʿAbd al-Razzāq narrated; Ibn Jurayj reported; Abu al-Zubayr reported to me; from Jābir. He said: **'A woman from Madinah gave a farm of hers as a life gift to a son of hers. Then the son died and she died after him, leaving behind a number of children. The children of the woman who gave the life gift said: "The farm reverts to us". The children of the one who was given the life gift said: "The farm belonged to our father during his life and after his death". They put their dispute to Ṭāriq, ʿUthmān's *mawlā*. He called in Jābir who testified that God's Messenger (peace be upon him) ruled that the *ʿumrā*, or life gift, belongs to the recipient. Ṭāriq ruled on this basis, then he wrote to ʿAbd al-Malik reporting this, and telling him of Jābir's testimony. ʿAbd al-Malik said: "Jābir tells the truth. Ṭāriq put this ruling into effect. The farm belongs to the children of the recipient of the life gift up to this day".'**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، وَإِسْحَاقُ بْنُ مَنْصُورٍ، (وَاللَّفْظُ لِابْنِ رَافِعٍ) قَالا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي أَبُو الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: أَعْمَرَتِ امْرَأَةٌ بِالْـمَدِينَةِ حَائِطًا لَهَا ابْنًا لَهَا، ثُمَّ تُوُفِّيَ وَتُوُفِّيَتْ بَعْدَهُ. وَتَرَكَتْ وَلَدًا وَلَهُ إِخْوَةٌ بَنُونَ لِلْمُعْمِرَةِ. فَقَالَ وَلَدُ الْـمُعْمِرَةِ: رَجَعَ الْحَائِطُ إِلَيْنَا، وَقَالَ بَنُو الْـمُعْمَرِ: بَلْ كَانَ لأَبِينَا حَيَاتَهُ وَمَوْتَهُ. فَاخْتَصَمُوا إِلَى طَارِقٍ، مَوْلَى عُثْمَانَ. فَدَعَا جَابِرًا، فَشَهِدَ عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِالْعُمْرَى لِصَاحِبِهَا. فَقَضَى بِذَلِكَ طَارِقٌ، ثُمَّ كَتَبَ إِلَى عَبْدِ الْـمَلِكِ فَأَخْبَرَهُ ذَلِكَ، وَأَخْبَرَهُ بِشَهَادَةِ جَابِرٍ. فَقَالَ عَبْدُ الْـمَلِكِ: صَدَقَ جَابِرٌ. فَأَمْضَى ذَلِكَ طَارِقٌ. فَإِنَّ ذَلِكَ الْحَائِطَ لِبَنِي الْـمُعْمَرِ حَتَّى الْيَوْمِ.

[3673–29]. (Dar al-Salam 3983) Abu Bakr ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated (Abu Bakr's text): Sufyān ibn ʿUyaynah (Isḥāq said: 'reported' and Abu Bakr said: 'narrated'); from ʿAmr; from Sulaymān ibn Yasār; that **'Ṭāriq ruled that the *ʿumrā* or life gift belongs to the heir, in line with what Jābir ibn ʿAbdullāh reported from God's Messenger (peace be upon him).'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لأَبِي بَكْرٍ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ أَبُو بَكْرٍ حَدَّثَنَا) سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرٍو، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، أَنَّ طَارِقًا قَضَى بِالْعُمْرَى لِلْوَارِثِ، لِقَوْلِ جَابِرِ بْنِ عَبْدِ اللهِ عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3674–30]. (Dar al-Salam 3984) Muhammad ibn al-Muthannā and Muhammad ibn Bashshār narrated:[iv] both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated. He said: I heard Qatādah narrating from ʿAṭā'; from Jābir ibn ʿAbdullāh; from the Prophet (peace be upon him). He said: **'The *ʿumrā* or life gift is valid'.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَمُحَمَّدُ بْنُ بَشَّارٍ، قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ قَالَ: سَمِعْتُ قَتَادَة يُحَدِّثُ عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْعُمْرَى جَائِزَةٌ».

[3675–31]. (Dar al-Salam 3985) Yaḥyā ibn Ḥabīb al-Ḥārithī narrated: Khālid (meaning Ibn al-Ḥārith) narrated; Saʿīd narrated; from Qatādah; from ʿAṭā’; from Jābir; from the Prophet (peace be upon him); that he said: **‘A life gift is inherited by its owners’.**

حَدَّثَنَا يَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ، حَدَّثَنَا خَالِدٌ (يَعْنِي ابْنَ الْحَارِثِ)، حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «الْعُمْرَى مِيرَاثٌ لأَهْلِهَا».

[3676–32]. (Dar al-Salam 3986) Muhammad ibn al-Muthannā and Ibn Bashshār narrated:[v] both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Qatādah; from al-Naḍr ibn Anas; from Bashīr ibn Nahīk; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **‘The *ʿumrā* or life gift is valid’.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهِيكٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْعُمْرَى جَائِزَةٌ».

[3677–000]. Yaḥyā ibn Ḥabīb narrated: Khālid (meaning Ibn al-Ḥārith) narrated; Saʿīd narrated; from Qatādah; with the same chain of transmission: **the same text, except that he said: ‘A life gift is inherited by its owners’, or he said: ‘is valid’.**

وَحَدَّثَنِيهِ يَحْيَى بْنُ حَبِيبٍ، حَدَّثَنَا خَالِدٌ (يَعْنِي ابْنَ الْحَارِثِ)، حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ، بِهَذَا الإِسْنَادِ. غَيْرَ أَنَّهُ قَالَ: «مِيرَاثٌ لأَهْلِهَا». أَوْ قَالَ: «جَائِزَةٌ».

Text Explanation

The hadiths in this chapter speak about an Arab practice dating to pre-Islamic days, which was to give a gift, normally real property such as a house or an agricultural plot for life. Hadiths No. 3664–3666 confirm that it is an unreturnable gift, even after the recipient's death. In hadith No. 3667, Jābir narrates: 'The *ʿumrā* or life gift God's Messenger has approved is that in which the man says: "This is for you and your offspring". If he says: "It is for you throughout your life", it will revert to its original owner'. The other hadiths confirm that the *ʿumrā* is valid and that it is inherited by the recipient's heirs.

Scholars of our school and others say that the *ʿumrā* is such whereby one person says to another: 'I give you, say, this house for life, or for as long as you live, or any expression indicating the duration of the recipient's life, or for him and his offspring.

Our scholars say that there are three situations pertaining to *ʿumrā*. The first is that whereby the giver says: 'I am giving you this house for life, and after your death it goes to your heirs or your children'. In this form, the gift is valid according to all scholars. The recipient becomes the owner of the house. This is, in fact, a normal gift, but it is expressed in a long sentence. When the recipient dies, the house is inherited by his heirs. If he has no heir, it goes to the state treasury. It does not revert to the giver of the gift in any case, contrary to Mālik's view.

The second situation is that whereby the giver says: 'I am giving it to you for your life'. He does not mention offspring or heirs. Two views are given by al-Shāfiʿī concerning the validity of such a contract. The more correct of these two views is the later one, which considers it valid and that

the same ruling of the first situation also applies in this case. The other view is the older one, stating that it is invalid. Some of our scholars have said that the older view is that the house is used by the recipient during his life and when the recipient dies, it reverts to the giver or his heirs, because it is a gift for the duration of the recipient's life. Some even say that al-Shāfiʿī's older view considers it a loan which the giver can claim back at any time, and if the giver dies, it reverts to his heirs.

The third situation is that whereby the giver says: 'I am giving this to you for the duration of your life. When you die, it reverts to me or to my heirs if I have died'. Scholars of our Shāfiʿī School differ on this case, with some of them saying that it is invalid. The more correct view among them is that it is valid and the same ruling of the first situation applies to it. They rely on the hadiths that give an unqualified ruling, such as Hadiths No. 3674 and No. 3676 which say: 'The *ʿumrā* or life gift is valid'. They operate these hadiths rather than drawing an analogy with invalid conditions.

The more correct view is that this transaction is valid in all situations and that the recipient becomes the full owner of the gift and he can use it as he wishes, including selling or renting it, etc. This is the view of our Shāfiʿī School. Ahmad said that the unqualified *ʿumrā* is valid, but not the qualified one. In his best known reports, Mālik says that in all cases, the *ʿumrā* is a gift of the usage of the house, or whatever is gifted, but not the actual house. Abu Ḥanīfah expresses the validity of the transaction in similar terms to our school. The same view is expressed by al-Thawrī, al-Ḥasan ibn Ṣāliḥ and Abu ʿUbaydah. The view of al-Shāfiʿī and other scholars is based on these authentic hadiths, but God knows best.

In hadith No. 3668, the Prophet describes the *ʿumrā* as fully be-longing to the recipient and the giver cannot stipulate any condition or exception. And in hadith No. 3670, the Prophet advises his Companions to hold on to their property and not to spoil them. He wanted them to understand that the *ʿumrā* transfers ownership to the recipient, and that it cannot revert to the giver in any case. Once they realized this, they would act with full

awareness of the consequences. Prior to Islamic days, people thought that the *ʿumrā* was similar to lending one's property and that one could claim it back. The Prophet ensured that they were aware of what it entailed. This hadith provides further evidence in support of al-Shāfiʿī's view, but God knows best.

Hadith No. 3672 mentions the case of the woman who gave a farm as *ʿumrā* to her son, and the dispute that arose after their deaths. The dispute was put to Ṭāriq – ʿUthmān ibn ʿAffān's *mawlā*. His name was Ṭāriq ibn ʿAmr. The Umayyad Caliph, ʿAbd al-Malik ibn Marwān appointed him governor of Madinah after ʿAbdullāh ibn al-Zubayr's rule of Hijaz was ended.

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i. Related by al-Bukhari, 2625; Abu Dāwūd, 3550, 3552, 3553 and 3554; al-Tirmidhī, 3148; al-Nasā'ī, 3744, 3745, 3747, 3748, 3749, 3750, 3751, 3752, 3703 and 3754; Ibn Mājah, 2380.

ii. Related by al-Nasā'ī, 3739.

iii. Related by al-Nasā'ī, 3738.

iv. Related by al-Bukhari, 2626; al-Nasā'ī, 3732 and 3762.

v. Related by al-Bukhari, 2626; Abu Dāwūd, 3548; al-Nasā'ī, 3757 and 3759.

BOOK
OF
BEQUESTS

CHAPTER 0

MAKING SURE TO WRITE A WILL

[3678–1]. (Dar al-Salam 3987) Abu Khaythamah Zuhayr ibn Ḥarb and Muhammad ibn al-Muthannā al-ʿAnazī narrated (Ibn al-Muthannā's text):[i] both said: Yaḥyā (who is Ibn Saʿīd al-Qaṭṭān) narrated; from ʿUbaydullāh; Nāfiʿ reported to me; from Ibn ʿUmar; that **'God's Messenger (peace be upon him) said: "It is not right for a Muslim person who has something he wishes to give as a bequest to stay two nights without having his will already written".'**

حَدَّثَنَا أَبُو خَيْثَمَةَ زُهَيْرُ بْنُ حَرْبٍ، وَمُحَمَّدُ بْنُ الْـمُثَنَّى الْعَنَزِيُّ (وَاللَّفْظُ لِابْنِ الْـمُثَنَّى) قَالا: حَدَّثَنَا يَحْيَى (وَهُوَ ابْنُ سَعِيدٍ الْقَطَّانُ)، عَنْ عُبَيْدِ اللهِ، أَخْبَرَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلاَّ وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ».

[3679–2]. (Dar al-Salam 3988) Abu Bakr ibn Abi Shaybah narrated: ʿAbdah ibn Sulaymān and ʿAbdullāh ibn Numayr narrated [H]. Ibn Numayr narrated;[ii] my father narrated to me; both from ʿUbaydullāh; with the same chain of transmission: **the same text, but they said: 'and he has something to bequeath'. They did not say 'something he wishes to give as a bequest'.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، وَعَبْدُ اللهِ بْنُ نُمَيْرٍ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنِي أَبِي، كِلاَهُمَا عَنْ عُبَيْدِ اللهِ، بِهَذَا الإِسْنَادِ. غَيْرَ أَنَّهُمَا قَالا: «وَلَهُ شَيْءٌ يُوصِي فِيهِ». وَلَمْ يَقُولا: «يُرِيدُ أَنْ يُوصِيَ فِيهِ».

[3680–3]. (Dar al-Salam 3989) Abu Kāmil al-Jaḥdarī narrated:[iii] Ḥammād (meaning Ibn Zayd) narrated [H]. Also, Zuhayr ibn Ḥarb narrated to me: Ismāʿīl (meaning Ibn ʿUlayyah) narrated; both from Ayyūb [H]. And, Abu al-Ṭāhir narrated to me; Ibn Wahb reported; Yūnus reported to me [H]. Further, Ḥārūn ibn Saʿīd al-Aylī narrated to me; Ibn Wahb narrated; Usāmah ibn Zayd al-Laythī reported to me [H]. Also, Muhammad ibn Rāfiʿ narrated; Ibn Abi Fudayk narrated; Hishām (meaning Ibn Saʿd) reported; all from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him): **the same text as ʿUbaydullāh's narration, and all of them said: 'and he has something to bequeath'; except in Ayyūb's narration where he says 'some-thing he wishes to give as a bequest', as indeed Yaḥyā narrates from ʿUbaydullāh.**

وَحَدَّثَنَا أَبُو كَامِلٍ الْجَحْدَرِيُّ، حَدَّثَنَا حَمَّادٌ (يَعْنِي ابْنَ زَيْدٍ)، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ (يَعْنِي ابْنَ عُلَيَّةَ) كِلاَهُمَا عَنْ أَيُّوبَ، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي أُسَامَةُ بْنُ زَيْدٍ اللَّيْثِيُّ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، أَخْبَرَنَا هِشَامٌ (يَعْنِي ابْنَ سَعْدٍ)، كُلُّهُمْ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. بِمِثْلِ حَدِيثِ عُبَيْدِ اللهِ. وَقَالُوا جَمِيعًا: «لَهُ شَيْءٌ يُوصِي فِيهِ». إِلاَّ فِي حَدِيثِ أَيُّوبَ، فَإِنَّهُ قَالَ: «يُرِيدُ أَنْ يُوصِيَ فِيهِ». كَرِوَايَةِ يَحْيَى عَنْ عُبَيْدِ اللهِ.

[3681–4]. (Dar al-Salam 3990) Ḥārūn ibn Maʿrūf narrated:[iv] ʿAbdullāh ibn Wahb narrated; ʿAmr (who is Ibn al-Ḥārith reported to me; from Ibn Shihāb; from Sālim; from his father; that he heard God's Messenger (peace be upon him) say: **'It is not right for a Muslim person who has something to give as a bequest to stay three nights without having his will already written.'**

ʿAbdullāh ibn ʿUmar said: **'Ever since I heard God's Messenger (peace be upon him) say this, I never spent a night without having my will ready with me'.**

حَدَّثَنَا هَارُونُ بْنُ مَعْرُوفٍ، حَدَّثَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي عَمْرٌو (وَهْوَ ابْنُ الْحَارِثِ)، عَنِ ابْنِ شِهَابٍ، عَنْ سَالِمٍ، عَنْ أَبِيهِ، أَنَّهُ سَمِعَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ ثَلاَثَ لَيَالٍ إِلاَّ وَوَصِيَّتُهُ عِنْدَهُ مَكْتُوبَةٌ».

قَالَ عَبْدُ اللهِ بْنُ عُمَرَ: مَا مَرَّتْ عَلَيَّ لَيْلَةٌ مُنْذُ سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ ذَلِكَ إِلاَّ وَعِنْدِي وَصِيَّتِي.

Abu al-Ṭāhir and Ḥarmalah narrated: both said: Ibn Wahb reported; Yūnus reported to me [H]. Also, ʿAbd al-Malik ibn Shuʿayb ibn al-Layth narrated to me; my father narrated to me; from my grandfather; ʿUqayl narrated to me [H]. And, Ibn Abi ʿUmar and ʿAbd ibn Ḥumayd narrated; both said: ʿAbd al-Razzāq narrated; Maʿmar reported; all of them from al-Zuhrī; with this chain of transmission: **a similar text to ʿAmr ibn al-Ḥārith's narration.**

وَحَدَّثَنِيهِ أَبُو الطَّاهِرِ، وَحَرْمَلَةُ، قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنِي عَبْدُ الْمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ، حَدَّثَنِي أَبِي، عَنْ جَدِّي، حَدَّثَنِي عُقَيْلٌ، ح. وَحَدَّثَنَا ابْنُ أَبِي

عُمَرَ، وَعَبْدُ بْنُ حُمَيْدٍ قَالا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ. نَحْوَ حَدِيثِ عَمْرِو بْنِ الْحَارِثِ.

Text Explanation

The first hadith says: ‘It is not right for a Muslim person who has something he wishes to give as a bequest to stay two nights without having his will already written’. Hadith No. 3681 says the same except that it mentions ‘three nights’ instead of two. The hadith urges the writing of a will. All Muslims agree that it has been ordered, but the view of our school and the great majority of scholars is that it is recommended, not obligatory. Dāwūd and other Ẓāhirī scholars claim that it is a duty, and they cite this hadith in support of their view. The hadith cannot be the basis of their argument, because it does not state that it is a duty. However, a person who owes something either as a debt or belonging to someone else, or he has something deposited with him or anything due to someone else should write this down and make it clear.

Al-Shāfiʿī said that the hadith means that the proper and safe act for a Muslim is to have his will written down. It is recommended to have it written early, when he is in good health, and to have it witnessed. He should write in it whatever is needed. If something then occurs that needs to be included, he adds it. They said that it is not necessary to write every day normal details and transactions.

In the hadith, the Prophet says: ‘without having his will already written’. This means written and witnessed. Writing is not enough and does not make the will valid or useful unless it is witnessed. This is our view and the majority of scholars. Imam Muhammad ibn Naṣr al-Marwazī, a Shāfiʿī scholar, said: ‘It is enough to have it written, without need for witnesses, as the apparent meaning of the hadith implies, but God knows best’.

Transmission

The beginning of this Book of Bequests is the start of the second of three places in Muslim's *Ṣaḥīḥ* which were missed by Ibrāhīm ibn Muhammad ibn Sufyān, Muslim's disciple and narrator of his anthology. He did not listen to these three parts directly from Muslim. We mentioned these in the Notes in our Introduction to this commentary. The first portion was in the Book of Pilgrimage. This is now the beginning of the second portion, starting with Muslim saying: 'Abu Khaythamah Zuhayr ibn Ḥarb and Muhammad ibn al-Muthannā al-ʿAnazī narrated (Ibn al-Muthannā's text): both said: Yaḥyā (who is Ibn Saʿīd al-Qaṭṭān) narrated; from ʿUbaydullāh; Nāfiʿ reported to me; from Ibn ʿUmar'.

i. Related by Abu Dāwūd, 2862.
ii. Related by al-Tirmidhī, 974; Ibn Mājah, 2699.
iii. Related by al-Tirmidhī, 2118.
iv. Related by al-Nasā'ī, 3621 and 3620.

CHAPTER 1

THE MAXIMUM TO BEQUEATH BY WILL IS ONE-THIRD

[3682–5]. (Dar al-Salam 3991–3992) Yaḥyā ibn Yaḥyā al-Tamīmī narrated:[i] Ibrāhīm ibn Saʿd reported; from Ibn Shihāb; from ʿĀmir ibn Saʿd; from his father.[ii] He said: **'God's Messenger (peace be upon him) visited me during the Farewell Pilgrimage as I was ill, close to death. I said: "Messenger of God, you see how much in pain I am, and I am wealthy and have only one daughter as an heir. Shall I give away two-thirds of my wealth as *ṣadaqah* [i.e., charity]?" He said: "No". I said: "Shall I then give one-half as *ṣadaqah*?" He said: "No; one-third. Even one-third is much. To leave your heirs in funds is better than you leaving them poor, seeking people's help. Whatever you spend, seeking God's pleasure, will earn a reward for you, even a bite you put in your wife's mouth". I said: "Messenger of God, will I be left behind after my people have gone?" The Prophet said: "If you live longer and you do something seeking God's pleasure, you will enhance your status and standard. Perhaps you may survive so that some people will benefit through you while others will come to grief. My Lord, let my companions' migration be complete and do not cause them to turn on their heels. Yet, the unfortunate one was Saʿd ibn Khawlah".'**

He said: **‘God’s Messenger (peace be upon him) was sorry for him as he died in Makkah’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، أَخْبَرَنَا إِبْرَاهِيمُ بْنُ سَعْدٍ، عَنِ ابْنِ شِهَابٍ، عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ أَبِيهِ قَالَ: عَادَنِي رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي حَجَّةِ الْوَدَاعِ، مِنْ وَجَعٍ أَشْفَيْتُ مِنْهُ عَلَى الْـمَوْتِ. فَقُلْتُ: يَا رَسُولَ اللهِ، بَلَغَنِي مَا تَرَى مِنَ الْوَجَعِ، وَأَنَا ذُو مَالٍ. وَلاَ يَرِثُنِي إِلاَّ ابْنَةٌ لِي وَاحِدَةٌ. أَفَأَتَصَدَّقُ بِثُلُثَىْ مَالِي؟ قَالَ: «لا». قَالَ قُلْتُ: أَفَأَتَصَدَّقُ بِشَطْرِهِ؟ قَالَ: «لا». الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ. إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ. وَلَسْتَ تُنْفِقُ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللهِ إِلاَّ أُجِرْتَ بِهَا، حَتَّى اللُّقْمَةُ تَجْعَلُهَا فِي فِي امْرَأَتِكَ». قَالَ: قُلْتُ يَا رَسُولَ اللهِ، أُخَلَّفُ بَعْدَ أَصْحَابِي؟ قَالَ: «إِنَّكَ لَنْ تُخَلَّفَ، فَتَعْمَلَ عَمَلاً تَبْتَغِي بِهِ وَجْهَ اللهِ، إِلاَّ ازْدَدْتَ بِهِ دَرَجَةً وَرِفْعَةً. وَلَعَلَّكَ تُخَلَّفُ حَتَّى يُنْفَعَ بِكَ أَقْوَامٌ، وَيُضَرَّ بِكَ آخَرُونَ. اللَّهُمَّ أَمْضِ لأَصْحَابِي هِجْرَتَهُمْ، وَلاَ تَرُدَّهُمْ عَلَى أَعْقَابِهِمْ. لَكِنِ الْبَائِسُ سَعْدُ ابْنُ خَوْلَةَ».

قَالَ: رَثَى لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ أَنْ تُوُفِّيَ بِمَكَّةَ.

Qutaybah ibn Saʿīd and Abu Bakr ibn Abi Shaybah narrated: both said: Sufyān ibn ʿUyaynah narrated [H]. Also, Abu al-Ṭāhir and Ḥarmalah narrated to me; both said: Ibn Wahb reported; Yūnus reported to me [H]. And, Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated; both said: ʿAbd al-Razzāq reported; Maʿmar reported; all of them from al-Zuhrī; with the same chain of transmission: **a similar text.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ قَالا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ، قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ

وَعَبْدُ بْنُ حُمَيْدٍ قَالا: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

[3683–000]. (Dar al-Salam 3993) Isḥāq ibn Manṣūr narrated to me:[iii] Abu Dāwūd al-Ḥafarī narrated; from Sufyān; from Saʿd ibn Ibrāhīm; from ʿĀmir ibn Saʿd; from Saʿd: he said: **‘The Prophet (peace be upon him) visited me during my illness…’ He narrated the same meaning as al-Zuhrī’s narration, but did not mention what the Prophet said about Saʿd ibn Khawalh. However, he said: ‘He would dislike to die in the city from which he migrated’.**

وَحَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، حَدَّثَنَا أَبُو دَاوُدَ الْحَفَرِيُّ، عَنْ سُفْيَانَ، عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ، عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ سَعْدٍ، قَالَ: دَخَلَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَيَّ يَعُودُنِي. فَذَكَرَ بِمَعْنَى حَدِيثِ الزُّهْرِيِّ، وَلَمْ يَذْكُرْ قَوْلَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي سَعْدِ ابْنِ خَوْلَةَ. غَيْرَ أَنَّهُ قَالَ: وَكَانَ يَكْرَهُ أَنْ يَمُوتَ بِالأَرْضِ الَّتِي هَاجَرَ مِنْهَا.

[3684–6]. (Dar al-Salam 3994) Zuhayr ibn Ḥarb narrated to me: al-Ḥasan ibn Mūsā narrated; Zuhayr narrated; Simāk ibn Ḥarb narrated; Musʿab ibn Saʿd narrated to me; from his father. He said: **‘I fell ill and I sent for the Prophet (peace be upon him). I said: “Let me divide my wealth as I please, but he refused”. I said: “Then half of it?” He still refused. I said: “Then one-third?” He remained silent after [the suggestion of] one-third. He said: “After that, one-third is permissible”.’**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا الْحَسَنُ بْنُ مُوسَى، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ، حَدَّثَنِي مُصْعَبُ بْنُ سَعْدٍ، عَنْ أَبِيهِ قَالَ: مَرِضْتُ فَأَرْسَلْتُ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: دَعْنِي أَقْسِمْ مَالِي حَيْثُ شِئْتُ فَأَبَى. قُلْتُ: فَالنِّصْفُ، فَأَبَى. قُلْتُ: فَالثُّلُثُ؟ قَالَ: فَسَكَتَ بَعْدَ الثُّلُثِ. قَالَ: فَكَانَ بَعْدُ الثُّلُثُ جَائِزًا.

[3685–000]. (Dar al-Salam 3995) Muhammad ibn al-Muthannā and Ibn Bashshār narrated to me: both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Simāk; with the same chain of transmission: **a similar text, but did not mention: ‘After that, one-third is permissible’.**

وَحَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ سِمَاكٍ، بِهَذَا الإِسْنَادِ: نَحْوَهُ. وَلَمْ يَذْكُرْ: فَكَانَ بَعْدُ الثُّلُثُ جَائِزًا.

[3686–7]. (Dar al-Salam 3996) Al-Qāsim ibn Zakariyyā’ narrated to me: Ḥusayn ibn ʿAlī narrated; from Zā’idah; from ʿAbd al-Malik ibn ʿUmayr; from Musʿab ibn Saʿd; from his father. He said: **‘The Prophet (peace be upon him) visited me during my illness. I said: “May I give all my wealth as bequests?” He said: “No”. I said: “Then half of it?” He said: “No”. I said: “Then one-third?” He said: “Yes, but even one-third is much”.’**

وَحَدَّثَنِي الْقَاسِمُ بْنُ زَكَرِيَّاءَ، حَدَّثَنَا حُسَيْنُ بْنُ عَلِيٍّ، عَنْ زَائِدَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ مُصْعَبِ بْنِ سَعْدٍ، عَنْ أَبِيهِ، قَالَ: عَادَنِي النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: أُوصِي بِمَالِي كُلِّهِ؟. قَالَ: «لا». قُلْتُ: فَالنِّصْفُ؟ قَالَ: «لا». فَقُلْتُ: أَبِالثُّلُثِ؟ فَقَالَ: «نَعَمْ، وَالثُّلُثُ كَثِيرٌ».

[3687–8]. (Dar al-Salam 3997) Muhammad ibn Abi ʿUmar al-Makkī narrated: al-Thaqafī narrated; from Ayyūb al-Sakhtiyānī; from ʿAmr ibn Saʿīd; from Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī; from three of Saʿd's sons, each of them narrating from his father; that **'The Prophet (peace be upon him) visited Saʿd [ibn Abi Waqqāṣ] during his illness in Makkah, and he wept. [The Prophet] said: "What makes you cry?" He said: "I fear to die in the city from which I migrated, as Saʿd ibn Khawlah died". The Prophet (peace be upon him) said: "My Lord, grant Saʿd full recovery. My Lord, grant Saʿd full recovery", repeating it three times. [Saʿd] said: "Messenger of God, I have plenty of money, and only my one daughter inherits me. May I give away [in charity] all my money?" He said: "No". He said: "Then two-thirds?" He said: "No". [Saʿd] said: "Then one-half?" He again said: "No". He said: "Then one-third?" He said: "One-third; but even one-third is much. Your charity out of your money is a *ṣadaqah*; what you spend on your dependants is *ṣadaqah*; what your wife eats out of your property is *ṣadaqah*. To leave your family well off (or he might have said: well) is better than leaving them seeking people's help", and he pointed with his hand'.**

حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْـمَكِّيُّ، حَدَّثَنَا الثَّقَفِيُّ، عَنْ أَيُّوبَ السَّخْتِيَانِيِّ، عَنْ عَمْرِو بْنِ سَعِيدٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ، عَنْ ثَلاَثَةٍ مِنْ وَلَدِ سَعْدٍ، كُلُّهُمْ يُحَدِّثُهُ عَنْ أَبِيهِ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ دَخَلَ عَلَى سَعْدٍ يَعُودُهُ بِمَكَّةَ، فَبَكَى. قَالَ: «مَا يُبْكِيكَ»؟ فَقَالَ: قَدْ خَشِيتُ أَنْ أَمُوتَ بِالأَرْضِ الَّتِي هَاجَرْتُ مِنْهَا، كَمَا مَاتَ سَعْدُ ابْنُ خَوْلَةَ. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «اللَّهُمَّ اشْفِ سَعْدًا، اللَّهُمَّ اشْفِ سَعْدًا». ثَلاَثَ مِرَارٍ. قَالَ: يَا رَسُولَ

اللهِ، إِنَّ لِي مَالاً كَثِيرًا، وَإِنَّمَا يَرِثُنِي ابْنَتِي. أَفَأُوصِي بِمَالِي كُلِّهِ؟ قَالَ: «لا». قَالَ: فَبِالثُّلُثَيْنِ؟ قَالَ: «لا». قَالَ: فَالنِّصْفُ؟ قَالَ: «لا». قَالَ: فَالثُّلُثُ؟ قَالَ: «الثُّلُثُ. وَالثُّلُثُ كَثِيرٌ. إِنَّ صَدَقَتَكَ مِنْ مَالِكَ صَدَقَةٌ. وَإِنَّ نَفَقَتَكَ عَلَى عِيَالِكَ صَدَقَةٌ. وَإِنَّ مَا تَأْكُلُ امْرَأَتُكَ مِنْ مَالِكَ صَدَقَةٌ. وَإِنَّكَ أَنْ تَدَعَ أَهْلَكَ بِخَيْرٍ - أَوْ قَالَ بِعَيْشٍ - خَيْرٌ مِنْ أَنْ تَدَعَهُمْ يَتَكَفَّفُونَ النَّاسَ، وَقَالَ بِيَدِهِ.

[3688–9]. (Dar al-Salam 3998) Abu al-Rabīʿ al-ʿAtakī narrated to me: Ḥammād narrated; Ayyūb narrated; from ʿAmr ibn Saʿīd; from Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī; from three of Saʿd's sons. They said: **'Saʿd fell ill in Makkah and God's Messenger visited him to enquire after his health…' a similar text to al-Thaqafī's narration.**

وَحَدَّثَنِي أَبُو الرَّبِيعِ الْعَتَكِيُّ، حَدَّثَنَا حَمَّادٌ، حَدَّثَنَا أَيُّوبُ، عَنْ عَمْرِو بْنِ سَعِيدٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ، عَنْ ثَلاَثَةٍ مِنْ وَلَدِ سَعْدٍ قَالُوا: مَرِضَ سَعْدٌ بِمَكَّةَ، فَأَتَاهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَعُودُهُ: بِنَحْوِ حَدِيثِ الثَّقَفِيِّ.

[3689–000]. (Dar al-Salam 3999) Muhammad ibn al-Muthannā narrated to me: ʿAbd al-Aʿlā narrated; Hishām narrated; from Muhammad; from Ḥumayd ibn ʿAbd al-Raḥmān; three of Saʿd ibn Mālik's sons narrated to me: everyone of them narrating the same as his brothers. He said: **'Saʿd fell ill in Makkah and God's Messenger visited him to enquire after his health…' the same text as the hadith narrated by ʿAmr ibn Saʿīd from Humayd al-Ḥimyarī.**

وَحَدَّثَنِي مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا عَبْدُ الأَعْلَى، حَدَّثَنَا هِشَامٌ، عَنْ مُحَمَّدٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، حَدَّثَنِي ثَلاَثَةٌ مِنْ وَلَدِ سَعْدِ بْنِ مَالِكٍ، كُلُّهُمْ يُحَدِّثُنِيهِ بِمِثْلِ حَدِيثِ صَاحِبِهِ، فَقَالَ: مَرِضَ سَعْدٌ بِمَكَّةَ، فَأَتَاهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَعُودُهُ: بِمِثْلِ حَدِيثِ عَمْرِو بْنِ سَعِيدٍ عَنْ حُمَيْدٍ الْحِمْيَرِيِّ.

[3690–10]. (Dar al-Salam 4000) Ibrāhīm ibn Mūsā al-Rāzī narrated to me:[iv] ʿĪsā (meaning Ibn Yūnus) reported [H]. Also, Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated; both said: Wakīʿ narrated [H]. And, Abu Kurayb narrated; Ibn Numayr narrated; all of them from Hishām ibn ʿUrwah; from his father; from Ibn ʿAbbās. He said: **‘Would that people dropped from one-third to one-quarter! God’s Messenger (peace be upon him) said: “One-third, but even one-third is much”.’**

In Wakīʿ’s narration: **‘plenty or much’.**

حَدَّثَنِي إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيُّ، أَخْبَرَنَا عِيسَى (يَعْنِي ابْنَ يُونُسَ)، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ قَالا: حَدَّثَنَا وَكِيعٌ، ح. وَحَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا ابْنُ نُمَيْرٍ، كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ قَالَ: لَوْ أَنَّ النَّاسَ غَضُّوا مِنَ الثُّلُثِ إِلَى الرُّبُعِ، فَإِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ».

وَفِي حَدِيثِ وَكِيعٍ: «كَبِيرٌ أَوْ كَثِيرٌ».

Text Explanation

This chapter includes several versions of the hadith that speaks about Saʿd ibn Abi Waqqāṣ’s illness when he was in Makkah performing the hajj in the company of the Prophet during his Farewell Pilgrimage. The hadith shows

that it is desirable to visit a person who is ill to comfort and support him. Such a visit is recommended for the leader of the community in the same way as it is recommended for ordinary people.

Saʿd points out to the Prophet that he was very ill. This is permissible for an ill person to do, if it is done for a proper purpose, such as receiving medical treatment, or to invite a prayer, or seek a recommendation or a fatwa, etc. What is reprehensible is to do this expressing dissatisfaction, because it detracts from his reward which he earns if he tolerates his illness with resignation and acceptance.

Saʿd mentions that he is well off, which makes clear that it is permissible to have plenty. He adds that he has 'only one daughter as an heir'. He meant that his immediate heirs and children are only one daughter; otherwise, Saʿd had other relatives who would be entitled to a share of his estate. Some suggest that he meant that only his one daughter has a stipulated share of inheritance. He asked the Prophet if he could give to charity the larger portion of his wealth, starting with the whole lot in hadith No. 3686, or two-thirds in hadith No. 3682, and dropping down when the Prophet refused, until the Prophet agreed to one-third, adding that even that was much.

The hadith shows the need to maintain fairness between what the heirs receive and what is given by will. Our scholars and others said that if one's heirs are rich, it is desirable that one gives one-third in charity and bequests. If one's heirs are poor, it is better to keep one's will to less than one-third. Scholars are unanimous that if a person gives by will more than one-third, and he has heirs, his will cannot be implemented without the heirs' agreement. Scholars also agree that a person may give all his wealth by will with his heirs' consent. A person who has no heirs cannot make bequests by will over one-third of his estate. However, Abu Ḥanīfah, his disciples, Isḥāq and one of two reports from Ahmad said that such a person's will is valid if it goes above one-third. This is also reported from ʿAlī and Ibn Masʿūd.

Saʿd asked the Prophet whether he could give two-thirds of his wealth as *ṣadaqah*, i.e., charity. He might have meant giving it by will, or he might have meant giving an immediate charity. According to our school and all scholars, the two are the same: not more than one-third can be given, except with the consent of the heirs. The Ẓāhirī scholars disagree, saying that a person in his final illness may give away all his property, in the same way as one who is in good health. The evidence in support of the view of the majority is clear, as the Prophet says: 'Even one-third is much', and the other hadith which mentions that one person set free six slaves during his last illness. The Prophet set free only two of them, keeping the other four in slavery.[v]

The Prophet tells Saʿd: 'To leave your heirs in funds is better than you leaving them poor, seeking people's help'. This urges kindness to relatives and taking care of them as well as looking after one's heirs. It also indicates that a generous kindness to a closer relative is better and earns more reward than to a distant relative. Some scholars take the Prophet's statement as indicating that a rich person is better than a poor one.

Continuing his advice, the Prophet said: 'Whatever you spend, seeking God's pleasure, will earn a reward for you, even a bite you put in your wife's mouth'. This statement encourages spending one's money for good purposes, and that all actions are judged by the intention behind them, and that an action earns its reward according to the intention of the person doing it. It further tells us that even our spending on our dependants is considered a good action that earns God's reward, if it is intended for God's sake. The Prophet stresses this meaning by saying, 'even a morsel you put in your wife's mouth'. Needless to say, one's wife is perhaps the most private source of one's happy feelings and enjoyment. When a husband puts a bite in his wife's mouth, he will normally be in a pleasurable situation with her. It is a situation that is totally different from those of fulfilling divine duties and seeking what is of benefit in the life to come. Yet the Prophet tells us that when a man does this, intending it to please God, he gains a reward

from Him for it. Needless to say, other situations are more likely to earn reward if done for God's sake. This means that when a person does something which is ordinarily permissible and intends it for God's sake, he is rewarded for it. This applies to eating one's food with the intention of gaining strength to do God's bidding; sleeping to gain some rest and waking up to fulfil worship duties in comfort, having sex with one's wife so that one does not think of doing what is forbidden, or in the hope of having a goodly child, etc. This is perhaps the meaning of the other hadith in which the Prophet says: 'In satisfying your sexual desire, you do a *ṣadaqah*', but God knows best.

Saʿd asks the Prophet: 'Messenger of God, will I be left behind after my people have gone?' *Qadi* ʿIyāḍ said that he was worried about being left behind in Makkah after the pilgrims started on their return journey to Madinah. He feared that he would die in Makkah, because he had left it and migrated for God's sake. Hence, he worried that if he died in Makkah, it would detract from his migration or from his reward for it. Or probably he feared staying in Makkah because of his illness, while the Prophet and his Companions would be on their way back to Madinah. Essentially, the Prophet's Companions did not like to go back on what they had forsaken for God's sake. Some scholars said on the basis of this hadith that the concept of migration was still valid after Makkah had fallen over to Islam. Others said that it was valid for those who migrated before Makkah was taken over. After it had fallen to the Prophet, the migration to Madinah ceased.

In his question about being left behind, Saʿd used the word *ukhallaf*. In his reply, the Prophet uses the same word in the sense of living longer. He said: 'If you live longer and you do something seeking God's pleasure, you will enhance your status and standard'. This hadith points out the merit of a long life in which a person increases his good deeds, thus earning more of God's reward. Again, the Prophet stresses doing things to please God, but God knows best.

The Prophet further tells Saʿd: ‘Perhaps you may survive so that some people will benefit through you while others will come to grief’. This hadith includes a miracle as the Prophet tells Saʿd of his future. [He lived more than 45 years after this conversation with the Prophet.] Saʿd was the commander of the Muslim army which liberated much of the land of Iraq, which was under the Persian Empire, and other areas as well. Some communities benefited by him in religion and worldly matters, while others came to grief on both counts. Some were killed as unbelievers fighting the Muslim army, and their property became war gains for the Muslims. He was appointed governor of Iraq and a large number of people received God’s guidance through him, while others who remained unbelievers came to grief as he established the truth of Islam.

Qadi ʿIyāḍ said that some scholars say that the reward for the Prophet’s Companions’ migration would not be lost if one had to stay in Makkah, compelled by necessity and then died there. It is only lost if the stay there was by choice. Other scholars say that the one who dies in Makkah loses his reward for migration whatever the reason for his stay might be. Others say that migration was only obligatory for the Muslims of Makkah. *Qadi* ʿIyāḍ refers to the Prophet’s supplication: ‘My Lord, let my Companions’ migration be complete and do not cause them to turn on their heels’. He said that some scholars see it as evidence that any migrant of the Prophet’s Companions who stayed in Makkah lost this status. To me, there is no evidence in the hadith to support this claim. The Prophet merely prayed to God to accept their migration and consider it complete. He prayed that God would not consider it invalidated, and would not let them turn back on their good and devoted status.

The Prophet says in the same hadith, No. 3682: ‘Yet, the unfortunate one was Saʿd ibn Khawlah’. The Prophet said that he was unfortunate because he died in Makkah during the Farewell Pilgrimage. The hadith concludes with: ‘He said: God’s Messenger (peace be upon him) was sorry for him as he died in Makkah’. Scholars said that this statement was by the

narrator, not by the Prophet whose words finished when he said, ‘the unfortunate one was Saʿd ibn Khawlah’. The narrator explained that the Prophet expressed his compassion to the deceased because of his death in Makkah. Scholars differ as to who said this sentence. Some say that it is the Prophet’s ill Companion, Saʿd ibn Abi Waqqās, and this is explained in some versions. *Qadi* ʿIyāḍ said that most reports suggest that this was said by al-Zuhrī.

Scholars give different reports about Saʿd ibn Khawlah. ʿĪsā ibn Dīnār and others said that he did not migrate from Makkah, but remained there until he died. Al-Bukhari mentions that he migrated and took part in the Battle of Badr, then went back to Makkah and died there. Ibn Hishām said that he migrated to Abyssinia with the second batch of migrants, yet he took part in the Battle of Badr and other battles against the unbelievers, then died in Makkah during the Farewell Pilgrimage in the tenth year of the Islamic calendar. Another report suggests that he died in Makkah in the seventh year, when there was a truce between the Muslims and the people of Makkah. According to this last possibility and in connection with what ʿĪsā ibn Dīnār said, he was unfortunate because he lost his status of migrant, as he chose to go back to Makkah and died there. According to other scholars, he was unfortunate because he died in Makkah whatever his situation was, even though it was not his choice. This because his reward was diminished as he did not die in the place of his migration, away from his homeland.

Qadi ʿIyāḍ said that some versions of this hadith mention that the Prophet left a man in Makkah with Saʿd ibn Abi Waqqāṣ, instructing him not to bury Saʿd in Makkah if he died there. In Hadith 3683 Saʿd ‘disliked to die in the city from which he had migrated’. And in Hadith 3687, the Prophet asked him why he was crying and he answered: ‘I fear to die in the city from which I migrated, as Saʿd ibn Khawlah died’. Saʿd ibn Khawlah was Subayʿah al-Aslamiyyah’s husband.

This hadith shows that it is permissible to limit the general recommendation stated in the Qur’an on the basis of the Sunnah. This is

agreed upon by the majority of scholars of methodology, and it is the correct view.

In the last hadith, No. 3690, Ibn ʿAbbās says: ‘Would that people dropped from one-third to one-quarter! God’s Messenger (peace be upon him) said: “One-third, but even one-third is much”. This makes clear that it is desirable to keep one’s will below one-third of one’s property. This is agreed by the great majority of scholars. According to our Shāfiʿī School, if one’s heirs are well off, it is preferable to make a will amounting to one-third, but if not, it is better to keep the will less than one-third. It is reported that Abu Bakr’s will was only one-fifth, and a similar percentage was ʿAlī’s will. Ibn ʿUmar and Isḥāq kept it to one-quarter, while others mentioned one-sixth, and others less than that. Others still kept it to one-tenth. Ibrāhīm al-Nakhaʿī said that scholars of the earliest generation disliked that the will should amount to what is equal to the share of one of the heirs. It is reported from ʿAlī, Ibn ʿAbbās, ʿĀ’ishah and others that a person who has heirs and limited means should not make bequests by will.

Transmission

The chain of transmission of hadith No. 3683 includes the narrator Abu Dāwūd al-Ḥafarī. Al-Ḥafarī relates to a district in Kufah called al-Ḥafar, where this Abu Dāwūd lived, as reported by Abu Ḥātim, Ibn Ḥibbān, Abu Saʿd al-Samʿānī and others. His name is ʿAmr ibn Saʿd and he is described as a reliable, ascetic and devout scholar. ʿAlī al-Madīnī said: ‘I do not think I ever saw in Kufah a more devout person than Abu Dāwūd al-Ḥafarī. Wakīʿ said that if calamity is averted in our time, it is through Abu Dāwūd. He died in year 203 or 206 AH, 819 or 822 CE.

The chain of transmission of hadith No. 3687 includes: ‘from Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī; from three of Saʿd’s sons, each of them narrating from his father; that the Prophet (peace be upon him) visited Saʿd during his illness in Makkah’, while in the next hadith: ‘from three of Saʿd’s sons: they said’. This second version is considered *mursal*, or having

an incomplete chain of transmission, because it is quoting Saʿd's sons who belonged to the *tābiʿīn* generation, which followed the Prophet's Companions. Muslim mentioned these different reports, some of which have complete chains of transmission while others are incomplete so that he shows the differences given by narrators.

Qadi ʿIyāḍ said: This and similar cases are among the aspects of defect which Muslim states in his Introduction that he demonstrates in the right places. Some scholars thought that he would highlight these defects separately and that he passed away before he could do so. The fact is that he has mentioned these defects at the right places in his anthology, as we explained in our Introduction. The difference in the chains of transmission does not detract from the authenticity of this narration, or the hadith itself, because the hadith is confirmed as authentic through chains of transmission that do not mention Ḥumayd and quote Saʿd's sons. They are mentioned in complete chains of transmission Muslim includes. We explained in our Introduction that if a hadith is related with a complete chain of transmission and an incomplete one, then scrupulous scholars rule that it has a complete chain of transmission, because this is an addition by a reliable source. Al-Dāraquṭnī questioned the authenticity of this version, but we answered his objection in similar cases, but God knows best.

Hadith No. 3690 has three chains of transmission and the third of these reads: 'Abu Kurayb narrated; Ibn Numayr narrated; all of them from Hishām ibn ʿUrwah; from his father; from Ibn ʿAbbās'. This is how it occurs in the copies in our areas which rely on al-Julūdī's narration. In all of them, the first narrator is Abu Kurayb. *Qadi* ʿIyāḍ mentions that it occurs also as Abu Kurayb in Ibn Māhān's copy, but in al-Julūdī's copy the name is changed to Abu Bakr ibn Abi Shaybah instead of Abu Kurayb. The correct version is what we have already stated, but God knows best.

i. Related by al-Bukhari, 56, 1295, 3936, 4409, 5668, 6373 and 6733; Abu Dāwūd, 2864; al-Tirmidhī, 2116; al-Nasā'ī in a shorter version, 3628; Ibn Mājah in a shorter version, 2708.

ii. His father was Saʿd ibn Abi Waqqāṣ, who was being visited by the Prophet in his illness. The other Saʿd mentioned at the end of the hadith was Saʿd ibn Khawlah, another Companion of the Prophet who died in Makkah a few days earlier, during the Farewell Pilgrimage.

iii. Related by al-Bukhari in a longer version, 2742 and 5354; al-Nasā'ī, 3629 and 3630.

iv. Related by al-Bukhari, 2743; al-Nasā'ī, 3636; Ibn Mājah, 2711.

v. The Prophet's action is in keeping with Islamic rules that the maximum bequest by will available to anyone is one-third of his or her property. As the deceased only had six slaves, representing the total of his estate, then he could only free two of them by will.

CHAPTER 2

CHARITY'S REWARD FOR A DECEASED PERSON

[3691–11]. (Dar al-Salam 4001) Yaḥyā ibn Ayyūb, Qutaybah ibn Saʿīd and ʿAlī ibn Ḥujr narrated:[i] they said: Ismāʿīl (who is Ibn Jaʿfar) narrated; from al-ʿAlā'; from his father; from Abu Hurayrah; that **'A man said to the Prophet: my father has died, leaving behind some property but did not make a will. Will it absolve him if I give *ṣadaqah* [i.e., charity] on his behalf?' The Prophet said: "Yes".'**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَعَلِيُّ بْنُ حُجْرٍ، قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنِ الْعَلاَءِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَجُلاً قَالَ لِلنَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: إِنَّ أَبِي مَاتَ وَتَرَكَ مَالاً، وَلَمْ يُوصِ. فَهَلْ يُكَفِّرُ عَنْهُ أَنْ أَتَصَدَّقَ عَنْهُ؟ قَالَ: «نَعَمْ».

[3692–12]. (Dar al-Salam 4002) Zuhayr ibn Ḥarb narrated: Yaḥyā ibn Saʿīd narrated; from Hishām ibn ʿUrwah; my father reported to me; from ʿĀ'ishah; that **'A man said to the Prophet: "My mother died suddenly, and I think that had she been able to speak, she would have given some *ṣadaqah*. Will I be rewarded if I give *ṣadaqah* on her behalf?" The Prophet said: "Yes".'**

حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، أَخْبَرَنِي أَبِي، عَنْ عَائِشَةَ، أَنَّ رَجُلاً قَالَ لِلنَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: إِنَّ أُمِّيَ افْتُلِتَتْ نَفْسُهَا، وَإِنِّي أَظُنُّهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ. فَلِيَ أَجْرٌ أَنْ أَتَصَدَّقَ عَنْهَا؟ قَالَ: «نَعَمْ».

[3693–000]. (Dar al-Salam 4003) Muhammad ibn ʿAbdullāh ibn Numayr narrated: Muhammad ibn Bishr narrated; Hishām narrated; from his father; from ʿĀ'ishah; that **'A man came to the Prophet and said: "Messenger of God, my mother died suddenly, leaving no will. I think that had she been able to talk, she would have given some *ṣadaqah*. Will she be credited with a reward if I give *ṣadaqah* on her behalf?" The Prophet said: "Yes".'**

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا مُحَمَّدُ بْنُ بِشْرٍ، حَدَّثَنَا هِشَامٌ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ، أَنَّ رَجُلاً أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللهِ إِنَّ أُمِّيَ افْتُلِتَتْ نَفْسُهَا وَلَمْ تُوصِ. وَأَظُنُّهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ. أَفَلَهَا أَجْرٌ إِنْ تَصَدَّقْتُ عَنْهَا؟ قَالَ: «نَعَمْ».

[3694–13]. (Dar al-Salam 4004) Abu Kurayb narrated: Abu Usāmah narrated [H]. Also, al-Ḥakam ibn Mūsā narrated to me; Shuʿayb ibn Isḥāq narrated [H]. And, Umayyah ibn Bisṭām narrated to me; Yazīd (meaning Ibn Zurayʿ) narrated; Rawḥ (who is Ibn al-Qāsim) narrated [H]. Further, Abu Bakr ibn Abi Shaybah narrated; Jaʿfar ibn ʿAwn narrated; all of them from Hishām ibn ʿUrwah; with this same chain of transmission.

In Abu Usāmah's and Rawḥ's narrations: **'Will I be rewarded…'**, as Yaḥyā ibn Saʿīd narrated; and in Shuʿayb's and Jaʿfar's narrations: **'Will she be credited with a reward…'**, as in Ibn Bishr's narration.

وَحَدَّثَنَاهُ أَبُو كُرَيْبٍ، حَدَّثَنَا أَبُو أُسَامَةَ، ح. وَحَدَّثَنِي الْحَكَمُ بْنُ مُوسَى، حَدَّثَنَا شُعَيْبُ بْنُ إِسْحَاقَ ح. وَحَدَّثَنِي أُمَيَّةُ بْنُ بِسْطَامَ، حَدَّثَنَا يَزِيدُ (يَعْنِي ابْنَ زُرَيْعٍ) حَدَّثَنَا رَوْحٌ (وَهُوَ ابْنُ الْقَاسِمِ) ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا جَعْفَرُ بْنُ عَوْنٍ، كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ، بِهَذَا الإِسْنَادِ.

أَمَّا أَبُو أُسَامَةَ وَرَوْحٌ فَفِي حَدِيثِهِمَا: فَهَلْ لِي أَجْرٌ، كَمَا قَالَ يَحْيَى بْنُ سَعِيدٍ. وَأَمَّا شُعَيْبٌ وَجَعْفَرٌ فَفِي حَدِيثِهِمَا: أَفَلَهَا أَجْرٌ، كَرِوَايَةِ ابْنِ بِشْرٍ.

Text Explanation

In hadith No. 3692, the man says to the Prophet that his mother who died suddenly would have given some *ṣadaqah*, had she had a chance to speak to him before her death. He is making this statement on the basis of his knowledge of her character and that she was keen to do good deeds, or because he knew she wanted to make some bequests by will. The hadith makes clear that it is permissible and desirable to give *ṣadaqah* on behalf of a deceased person, and that the reward for it is credited to the deceased. The one who gives such *ṣadaqah* will also be rewarded. All this is agreed upon by all Muslims. We discussed this at the beginning of our commentary, as we commented on Muslim's Introduction to his anthology.

These hadiths make an exception concerning the general Qur'anic rule: 'Man will only have what he strives for'. (53: 39) All Muslims agree that it is not a duty of an heir to donate voluntary charity on behalf of his deceased relative; it is only desirable. As for outstanding financial duties of the deceased, these must be settled from the deceased's estate, if any, whether he has made a will or given instructions to this effect or not. This applies to what is due to God, such as zakat, hajj, pledges, indemnity, compensation for inability to fast, etc. and also what is due to other humans. If the deceased leaves nothing to be inherited, his heirs are not obliged to settle

his unpaid debt, but it is recommended for the heir and others to settle such debts.

In hadith No. 3691, the man asks the Prophet about his father: ‘Will it absolve him if I give *ṣadaqah* [i.e., charity] on his behalf?’ He is asking whether the *ṣadaqah* he gives on behalf of his father will wipe away some of his sins, but God knows best.

i. Related by al-Nasā’ī, 3654.

CHAPTER 3

REWARD AFTER DEATH

[3695–14]. (Dar al-Salam 4005) Yaḥyā ibn Ayyūb, Qutaybah (meaning Ibn Saʿīd) and Ibn Ḥujr narrated:[i] they said: Ismāʿīl (who is Ibn Jaʿfar) narrated; from al-ʿAlā'; from his father; from Abu Hurayrah; that **'God's Messenger (peace be upon him) said: "When a human being dies, his action ceases except in one of three ways: a continuous act of charity, a useful contribution to knowledge, or a dutiful child who prays for him".'**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ (يَعْنِي ابْنَ سَعِيدٍ)، وَابْنُ حُجْرٍ قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (هُوَ ابْنُ جَعْفَرٍ)، عَنِ الْعَلاَءِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِذَا مَاتَ الإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلاَّ مِنْ ثَلاَثَةٍ: إِلاَّ مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ».

Text Explanation

Scholars say that the hadith means that all good action a person does in his life come to an end, and he earns no renewed reward for it, except in these three ways, because he is the initiator. Man's child is part of what he gets in life. The same is true of his contribution to knowledge, whether he is the author or one who is editing someone else's work, or commenting on it. The same applies to a continuous act of charity, i.e. an endowment. The hadith also states the importance of marriage, in the hope of having good and

dutiful children. We mentioned earlier, in the Book of Marriage, that people have different attitudes to marriage.

The hadith provides evidence confirming the legitimacy of endowment and its great reward, and also the high importance of knowledge, urging Muslims to acquire it and to impart it to others by teaching, explaining and writing. It is important to choose the most beneficial branches of knowledge. The hadith further explains that supplication for a deceased person is credited to him as part of his reward. The same is true of *ṣadaqah* and both are agreed upon by all scholars, as also the settlement of outstanding debt.

As for the hajj performed on behalf of a deceased person, it is credited to the deceased according to al-Shāfiʿī and scholars who share his view. It is an aspect of discharging a debt, if it is a duty, and it comes under bequests if it is voluntary hajj. If the deceased owes some fasting duty, his next of kin should fast on his behalf. We explained this in the Book of Fasting. As for Qur'anic recitation which a person does on behalf of a deceased person, or prayer on his behalf, etc. the reward for these is not credited to the deceased according to the Shāfiʿī School and the majority of scholars. However, the question is controversial and we explained it at the beginning of this commentary, in commenting on Muslim's Introduction to his anthology.

i. Related by al-Bukhari, 1376; al-Nasā'ī, 3653.

CHAPTER 4

ENDOWMENT

[3696–15]. (Dar al-Salam 4006) Yaḥyā ibn Yaḥyā al-Tamīmī narrated:[i] Sulaym ibn Akhḍar reported; from Ibn ʿAwn; from Nāfiʿ; from Ibn ʿUmar. He said: **‘ʿUmar acquired a [piece of] land at Khaybar and he went to the Prophet (peace be upon him) seeking his instructions. He said: “Messenger of God, I have acquired land at Khaybar, and I never had a property better than this. What do you advise me to do with it?” The Prophet said: “If you like, you endow it and make it a charity”. ʿUmar endowed it as a charity stating that the land could not be sold, bought, inherited or given as a gift. ʿUmar made it a *ṣadaqah* for the poor, relatives, to free slaves, for God’s cause, stranded travellers and guests. Whoever might be in charge of it may eat of it in a reasonable manner, and may give a friend, without hoarding any of it.’ He said: ‘I narrated this to Muhammad, and when I reached this point, “without hoarding any of it”, Muhammad said: “without storing income”.**

Ibn ʿAwn said: **‘Someone who read the book told me that it says: “without storing income”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، أَخْبَرَنَا سُلَيْمُ بْنُ أَخْضَرَ، عَنِ ابْنِ عَوْنٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: أَصَابَ عُمَرُ أَرْضًا بِخَيْبَرَ، فَأَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمِرُهُ فِيهَا، فَقَالَ:

يَا رَسُولَ اللهِ، إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أُصِبْ مَالاً قَطُّ هُوَ أَنْفَسُ عِنْدِي مِنْهُ، فَمَا تَأْمُرُنِي بِهِ؟ قَالَ: «إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا». قَالَ: فَتَصَدَّقَ بِهَا عُمَرُ، أَنَّهُ لاَ يُبَاعُ أَصْلُهَا، وَلاَ يُبْتَاعُ، وَلاَ يُورَثُ، وَلاَ يُوهَبُ. قَالَ: فَتَصَدَّقَ عُمَرُ فِي الْفُقَرَاءِ، وَفِي الْقُرْبَى، وَفِي الرِّقَابِ، وَفِي سَبِيلِ اللهِ، وَابْنِ السَّبِيلِ، وَالضَّيْفِ. لا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْـمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ.

قَالَ فَحَدَّثْتُ بِهَذَا الْحَدِيثِ مُحَمَّدًا، فَلَمَّا بَلَغْتُ هَذَا الْـمَكَانَ غَيْرَ مُتَمَوِّلٍ فِيهِ. قَالَ مُحَمَّدٌ: غَيْرَ مُتَأَثِّلٍ مَالاً. قَالَ ابْنُ عَوْنٍ: وَأَنْبَأَنِي مَنْ قَرَأَ هَذَا الْكِتَابَ أَنَّ فِيهِ: غَيْرَ مُتَأَثِّلٍ مَالاً.

[3697–000]. (Dar al-Salam 4007) Abu Bakr ibn Abi Shaybah narrated: Ibn Abi Zā’idah narrated [H]. Also, Isḥāq narrated; Azhar al-Sammān reported [H]. And, Muhammad ibn al-Muthannā narrated; Ibn Abi ʿAdiy narrated; all of them from Ibn ʿAwn with the same chain of transmission: **the same text. However, Ibn Abi Zā’idah’s and Azhar’s narrations stop after ‘and may give a friend, without hoarding any of it’. They do not mention what comes after that. Ibn Abi ʿAdiy’s narration includes what Sulaym said: ‘I narrated this to Muhammad, etc.’**

حَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا ابْنُ أَبِي زَائِدَةَ، ح. وَحَدَّثَنَا إِسْحَاقُ، أَخْبَرَنَا أَزْهَرُ السَّمَّانُ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، كُلُّهُمْ عَنِ ابْنِ عَوْنٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. غَيْرَ أَنَّ حَدِيثَ ابْنِ أَبِي زَائِدَةَ وَأَزْهَرَ انْتَهَى عِنْدَ قَوْلِهِ: «أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ». وَلَمْ يُذْكَرْ مَا بَعْدَهُ. وَحَدِيثُ ابْنِ أَبِي عَدِيٍّ فِيهِ مَا ذَكَرَ سُلَيْمٌ قَوْلُهُ فَحَدَّثْتُ بِهَذَا الْحَدِيثِ مُحَمَّدًا، إِلَى آخِرِهِ.

[3698–000]. (Dar al-Salam 4008) Isḥāq ibn Ibrāhīm narrated:[ii] Abu Dāwūd al-Ḥafarī ʿUmar ibn Saʿd narrated; from Sufyān; from Ibn ʿAwn; from Nāfiʿ; from Ibn ʿUmar; from ʿUmar. He said: **'I acquired a [piece of] land in Khaybar and I went to God's Messenger (peace be upon him). I said: "I acquired land which is the dearest to me and the best property I have ever had…".' He narrated the hadith with the same text, but did not mention, 'I narrated this to Muhammad, etc.'**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا أَبُو دَاوُدَ الْحَفَرِيُّ عُمَرُ بْنُ سَعْدٍ، عَنْ سُفْيَانَ، عَنِ ابْنِ عَوْنٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنْ عُمَرَ قَالَ: أَصَبْتُ أَرْضًا مِنْ أَرْضِ خَيْبَرَ، فَأَتَيْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: أَصَبْتُ أَرْضًا لَمْ أُصِبْ مَالاً أَحَبَّ إِلَيَّ وَلاَ أَنْفَسَ عِنْدِي مِنْهَا. وَسَاقَ الْحَدِيثَ بِمِثْلِ حَدِيثِهِمْ. وَلَمْ يَذْكُرْ فَحَدَّثْتُ مُحَمَّدًا وَمَا بَعْدَهُ.

Text Explanation

This hadith provides evidence that consecrating a property as an endowment is perfectly appropriate, and it is contrary to the practices of ignorant, pre-Islamic days. This is the view of our Shāfiʿī School and the great majority of scholars. This is also evidenced by the unanimous practice of Muslims that what is endowed of mosques and drinking water is valid. The hadith makes clear that an endowment may not be sold, gifted or inherited, and that it follows the conditions stipulated by the person making the endowment. The hadith shows that the conditions stated by the one giving the endowment are valid. It highlights the merit of an endowment as a continuous act of charity, and the excellent merit of choosing one's precious property to make it such an endowment. The hadith further highlights a good characteristic of ʿUmar and his merit of seeking the advice of good and devout people who can point out the best ways.

The hadith indicates that Khaybar was taken by the Muslims by force, and that those who took its war gains became the proprietors of its land and that they shared it and became the full owners of their shares, doing with them whatever they pleased. The hadith further highlights the merit of kindness to relatives and giving them shares of any endowment.

The condition that the person in charge of the land may eat of it in a reasonable manner means that he takes what is customary, not more, but God knows best.

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i. Related by al-Bukhari, 2737, 2772 and in a shorter version, 2773; Abu Dāwūd, 2878; al-Tirmidhī, 1375; al-Nasā'ī, 3601, 3602 and 3603; Ibn Mājah, 2396.

ii. Related by al-Nasā'ī, 3599, 3600 and in a shorter version, 3607.

CHAPTER 5

NO WILL FOR A PERSON WHO HAS NOTHING TO BEQUEATH

[3699–16]. (Dar al-Salam 4009) Yaḥyā ibn Yaḥyā al-Tamīmī narrated:[i] ʿAbd al-Raḥmān ibn Mahdī reported; from Mālik ibn Mighwal; from Ṭalḥah ibn Muṣarrif. He said: **‘I asked ʿAbdullāh ibn Abi Awfā: “Did God’s Messenger (peace be upon him) make a will?” He said: “No”. I said: “Why then are Muslims required to make a will; or why are they ordered to make a will?” He said: “He urged adherence to God’s Book, Mighty and Exalted”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، أَخْبَرَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ مَالِكِ بْنِ مِغْوَلٍ، عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ قَالَ: سَأَلْتُ عَبْدَ اللهِ بْنَ أَبِي أَوْفَى: هَلْ أَوْصَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ لا. قُلْتُ: فَلِمَ كُتِبَ عَلَى الْمُسْلِمِينَ الْوَصِيَّةُ؟ أَوْ فَلِمَ أُمِرُوا بِالْوَصِيَّةِ؟ قَالَ: أَوْصَى بِكِتَابِ اللهِ عَزَّ وَجَلَّ.

[3700–17]. (Dar al-Salam 4010) Abu Bakr ibn Abi Shaybah narrated: Wakīʿ narrated [H]. Also, Ibn Numayr narrated; my father narrated; both from Mālik ibn Mighwal with the same chain of transmission: **the same text. Except that in Wakīʿ’s narration: ‘I said: “How then are people required to make a will?”’ And in**

Ibn Numayr's narration: 'I said: "How then did a will become required of Muslims?"'

وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكِيعٌ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، كِلاَهُمَا عَنْ مَالِكِ بْنِ مِغْوَلٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. غَيْرَ أَنَّ فِي حَدِيثِ وَكِيعٍ قُلْتُ: فَكَيْفَ أُمِرَ النَّاسُ بِالْوَصِيَّةِ؟ وَفِي حَدِيثِ ابْنِ نُمَيْرٍ قُلْتُ: كَيْفَ كُتِبَ عَلَى الْـمُسْلِمِينَ الْوَصِيَّةُ؟

[3701–18]. (Dar al-Salam 4011–4012) Abu Bakr ibn Abi Shaybah narrated:[ii] ʿAbdullāh ibn Numayr and Abu Muʿāwiyah narrated; from al-Aʿmash [H]. Also, Muhammad ibn ʿAbdullāh ibn Numayr narrated; my father and Abu Muʿāwiyah narrated; both said: al-Aʿmash narrated; from Abu Wā'il; from Masrūq; from ʿĀ'ishah. She said: **'God's Messenger (peace be upon him) neither left a dīnār, dirham, sheep or camel, nor did he bequeath anything'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ اللهِ بْنُ نُمَيْرٍ وَأَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا أَبِي وَأَبُو مُعَاوِيَةَ قَالا: حَدَّثَنَا الأَعْمَشُ، عَنْ أَبِي وَائِلٍ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: مَا تَرَكَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ دِينَارًا وَلاَ دِرْهَمًا، وَلاَ شَاةً وَلاَ بَعِيرًا، وَلاَ أَوْصَى بِشَيْءٍ.

Zuhayr ibn Ḥarb, ʿUthmān ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated: all from Jarīr [H]. Also, ʿAlī ibn Khashram narrated; ʿĪsā (who is Ibn Yūnus) reported; all from al-Aʿmash; with the same chain of transmission: **the same text.**

وَحَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، كُلُّهُمْ عَنْ جَرِيرٍ، ح. وَحَدَّثَنَا عَلِيُّ بْنُ خَشْرَمٍ، أَخْبَرَنَا عِيسَى (وَهُوَ ابْنُ يُونُسَ)، جَمِيعًا عَنِ الأَعْمَشِ، بِهَذَا

الإِسْنَادِ: مِثْلَهُ.

[3702–19]. (Dar al-Salam 4013) Yaḥyā ibn Yaḥyā and Abu Bakr ibn Abi Shaybah narrated (Yaḥyā's text):[iii] he said: Ismāʿīl ibn ʿUlayyah reported; from Ibn ʿAwn; from Ibrāhīm; from al-Aswad ibn Yazīd. He said: **'People mentioned to ʿĀ'ishah that ʿAlī was given a bequest. She said: "When did the Prophet make a bequest. He was leaning on my chest (or she said on my lap) and he called for a bowl. He dropped into my lap, and I did not even notice that he had passed away. When did he make a bequest to him, then?"'**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ (وَاللَّفْظُ لِيَحْيَى) قَالَ: أَخْبَرَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ، عَنِ ابْنِ عَوْنٍ، عَنْ إِبْرَاهِيمَ، عَنِ الأَسْوَدِ بْنِ يَزِيدَ قَالَ: ذَكَرُوا عِنْدَ عَائِشَةَ أَنَّ عَلِيًّا كَانَ وَصِيًّا، فَقَالَتْ: مَتَى أَوْصَى إِلَيْهِ؟ فَقَدْ كُنْتُ مُسْنِدَتَهُ إِلَى صَدْرِي - أَوْ قَالَتْ حَجْرِي - فَدَعَا بِالطَّسْتِ. فَلَقَدِ انْخَنَثَ فِي حَجْرِي، وَمَا شَعَرْتُ أَنَّهُ مَاتَ. فَمَتَى أَوْصَى إِلَيْهِ؟

[3703–20]. (Dar al-Salam 4014) Saʿīd ibn Manṣūr, Qutaybah ibn Saʿīd, Abu Bakr ibn Abi Shaybah and ʿAmr al-Nāqid narrated (Saʿīd's text):[iv] they said: Sufyān narrated; from Sulaymān al-Aḥwal; from Saʿīd ibn Jubayr. He said: **'Ibn ʿAbbās said: "Thursday! What a Thursday!" He then wept until pebbles were wet with his tears. I said: "What about Thursday, Ibn ʿAbbās?" He said: "God's Messenger (peace be upon him) was in severe pain". He said: "Bring me something and I will write you something so that you will never go astray after I am gone". They disputed, and no dispute should take place in front**

of a prophet. They asked: “What is wrong with him? Is he unaware? Make sure”. He said: “Leave me; what I am into is better. I recommend you three matters: Expel Evacuate the idolaters from the Island of Arabia; and give a delegation gifts similar to what I used to give”. He did not mention the third, or perhaps he mentioned it but I have forgotten it.’

حَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ (وَاللَّفْظُ لِسَعِيدٍ) قَالُوا: حَدَّثَنَا سُفْيَانُ، عَنْ سُلَيْمَانَ الأَحْوَلِ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: يَوْمُ الْخَمِيسِ! وَمَا يَوْمُ الْخَمِيسِ! ثُمَّ بَكَى، حَتَّى بَلَّ دَمْعُهُ الْحَصَى. فَقُلْتُ: يَا ابْنَ عَبَّاسٍ، وَمَا يَوْمُ الْخَمِيسِ؟ قَالَ: اشْتَدَّ بِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَجَعُهُ، فَقَالَ: «ائْتُونِي أَكْتُبْ لَكُمْ كِتَابًا لاَ تَضِلُّوا بَعْدِي». فَتَنَازَعُوا، وَمَا يَنْبَغِي عِنْدَ نَبِيٍّ تَنَازُعٌ. وَقَالُوا: مَا شَأْنُهُ؟ أَهَجَرَ؟ اسْتَفْهِمُوهُ. قَالَ: «دَعُونِي، فَالَّذِي أَنَا فِيهِ خَيْرٌ. أُوصِيكُمْ بِثَلاَثٍ: أَخْرِجُوا الْمُشْرِكِينَ مِنْ جَزِيرَةِ الْعَرَبِ، وَأَجِيزُوا الْوَفْدَ بِنَحْوِ مَا كُنْتُ أُجِيزُهُمْ». قَالَ: وَسَكَتَ عَنِ الثَّالِثَةِ، أَوْ قَالَهَا فَأُنْسِيتُهَا.

Abu Isḥāq Ibrāhīm said: al-Ḥasan ibn Bishr narrated: he said: Sufyān narrated: **this hadith.**

قَالَ أَبُو إِسْحَاقَ إِبْرَاهِيمُ حَدَّثَنَا الْحَسَنُ بْنُ بِشْرٍ، قَالَ حَدَّثَنَا سُفْيَانُ، بِهَذَا الْحَدِيثِ.

[3704–21]. (Dar al-Salam 4015) Isḥāq ibn Ibrāhīm narrated: Wakīʿ reported; from Mālik ibn Mighwal; from Ṭalḥah ibn Muṣarrif; from Saʿīd ibn Jubayr; from Ibn ʿAbbās; that **‘He said: “Thursday! What a Thursday!” Then he was in tears until I saw tears on his cheeks like arranged pearls. He said: “God’s Messenger (peace be upon him) said: ‘Bring me a shoulder blade and**

inkpot (or a sheet and inkpot) so that I write something for you with which you will never go astray'." People said that God's Messenger (peace be upon him) was unconscious'.

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا وَكِيعٌ، عَنْ مَالِكِ بْنِ مِغْوَلٍ، عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: يَوْمُ الْخَمِيسِ، وَمَا يَوْمُ الْخَمِيسِ! ثُمَّ جَعَلَ تَسِيلُ دُمُوعُهُ، حَتَّى رَأَيْتُ عَلَى خَدَّيْهِ كَأَنَّهَا نِظَامُ اللُّؤْلُؤِ. قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «ائْتُونِي بِالْكَتِفِ وَالدَّوَاةِ - أَوِ اللَّوْحِ وَالدَّوَاةِ - أَكْتُبْ لَكُمْ كِتَابًا لَنْ تَضِلُّوا بَعْدَهُ أَبَدًا». فَقَالُوا: إِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَهْجُرُ.

[3705–22]. (Dar al-Salam 4016) Muhammad ibn Rāfiʿ and ʿAbd ibn Ḥumayd narrated to me:[v] ʿAbd al-Razzāq (ʿAbd said: 'reported' and Ibn Rāfiʿ said: 'narrated'); Maʿmar reported; from al-Zuhrī; from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah; from Ibn ʿAbbās. He said: **'When God's Messenger (peace be upon him) was close to death, there were some men in his home, including ʿUmar ibn al-Khaṭṭāb. The Prophet said: "Let me write you something with which you will never go astray". ʿUmar said: "God's Messenger is in great pain, and you have the Qur'an. God's Book is sufficient for us. The people who were in the house differed and disputed". Some said: "Bring him what he needs so that he will write you something with which you will never go astray after he has gone". Others were saying the same as ʿUmar said. When they continued with their arguments close to God's Messenger (peace be upon him), he said to them: "Leave".'**

ʿUbaydullāh said: **‘Ibn ʿAbbās used to say: “The real tragedy is their dispute and argument which prevented God’s Messenger (peace be upon him) from writing what he intended to write”.’**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، وَعَبْدُ بْنُ حُمَيْدٍ. (قَالَ عَبْدٌ أَخْبَرَنَا وَقَالَ ابْنُ رَافِعٍ حَدَّثَنَا) عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللهِ بْنِ عَبْدِ اللهِ بْنِ عُتْبَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: لَمَّا حُضِرَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَفِي الْبَيْتِ رِجَالٌ فِيهِمْ عُمَرُ بْنُ الْخَطَّابِ، فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «هَلُمَّ أَكْتُبْ لَكُمْ كِتَابًا لاَ تَضِلُّونَ بَعْدَهُ». فَقَالَ عُمَرُ: إِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَدْ غَلَبَ عَلَيْهِ الْوَجَعُ. وَعِنْدَكُمُ الْقُرْآنُ، حَسْبُنَا كِتَابُ اللهِ. فَاخْتَلَفَ أَهْلُ الْبَيْتِ فَاخْتَصَمُوا، فَمِنْهُمْ مَنْ يَقُولُ قَرِّبُوا يَكْتُبْ لَكُمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ كِتَابًا لَنْ تَضِلُّوا بَعْدَهُ. وَمِنْهُمْ مَنْ يَقُولُ مَا قَالَ عُمَرُ. فَلَمَّا أَكْثَرُوا اللَّغْوَ وَالاِخْتِلاَفَ عِنْدَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «قُومُوا».

قَالَ عُبَيْدُ اللهِ فَكَانَ ابْنُ عَبَّاسٍ يَقُولُ: إِنَّ الرَّزِيَّةَ كُلَّ الرَّزِيَّةِ مَا حَالَ بَيْنَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَبَيْنَ أَنْ يَكْتُبَ لَهُمْ ذَلِكَ الْكِتَابَ مِنِ اخْتِلاَفِهِمْ وَلَغَطِهِمْ.

Text Explanation

Hadiths No. 3699, No. 3700 and No. 3701 confirm that the Prophet did not make a will in favour of anyone. He did not make any bequest to anyone because he had no property to bequeath. Contrary to what the Shia allege, he made no will in favour of ʿAlī or any other person. The plots of land he held in Khaybar and Fadak he gave over as a charity endowment in favour of the Muslim community during his lifetime. There are several authentic hadiths mentioning that the Prophet ‘made a will’ concerning God’s Book, kindness to members of his household, the removal of unbelievers from the

Arabian Peninsula and giving gifts to visiting delegations. Although these hadiths use the same phrase as ‘making a will’, i.e., *yūṣī* and *waṣiyyah*, these words are used in their other sense, which is ‘recommend’ and ‘recommendation’. Thus, there is no conflict between these hadiths. In hadith No. 3699, the Prophet ‘urged adherence to God’s Book’. This means that he urged all Muslims, throughout all generations, to implement what is in the Qur’an and not to deviate from it. God says: ‘No single thing have We left out of the Book’. (6: 38) This means that somethings are learnt from the actual text of God’s Book, as it addresses these directly, and others are learnt by deduction.

In the same hadith, the question is raised: ‘Why then are Muslims required to make a will; or why are they ordered to make a will?’ The question refers to the Qur’anic verse which says: ‘It is prescribed for you, when death approaches any of you and he is leaving behind some property, to make bequests in favour of his parents and other near of kin in fairness’. (2: 180). According to the majority of scholars, the ruling in this verse is abrogated by subsequent Qur’anic revelations. It is also probable that the questioner was referring to the recommendation to make bequests by will, but God knows best.

In hadiths No. 2703 and No. 2704, Ibn ʿAbbās says: ‘Thursday! What a Thursday!’ This he said to enhance its importance and the misfortune Ibn ʿAbbās believed to have occurred on that day when what the Prophet intended to be written did not take place. Hence Ibn ʿAbbās said in Hadith 2705: ‘The real tragedy is their dispute and argument which prevented God’s Messenger (peace be upon him) from writing what he intended to write’. This is what Ibn ʿAbbās meant, although the right thing was not to have it written, as we shall presently explain, God willing.

Hadith No. 3704 mentions that when he was in severe pain, ‘God’s Messenger (peace be upon him) said: “Bring me a shoulder blade and inkpot (or a sheet and inkpot) so that I write something for you with which you will never go astray”. People said that God’s Messenger (peace be upon

him) was unconscious'. And in hadith No. 3705, ''Umar said: God's Messenger is in great pain, and you have the Qur'an. God's Book is sufficient for us. The people who were in the house differed and disputed. Some said: Bring him what he needs so that he will write you something with which you will never go astray after he has gone. Others were saying the same as 'Umar said. When they continued with their arguments close to God's Messenger (peace be upon him), he said to them: "Leave".'

We have to remember that the Prophet (peace be upon him) was infallible in all that pertained to God's message. He could not utter a lie or change any religious ruling during any time of health or illness in his life. He could not abandon explaining what he was commanded to explain, or neglect delivering what God required him to deliver. However, he was not immune to illness and whatever may affect the human body of weakness or malady. Nothing of this detracted from his status or could cast a shadow over any part of Islamic Shariah. No trouble faced by the Prophet at any time caused him to utter anything that was contrary to the rulings that he had stated earlier.

Bearing all this in mind, we may add that scholars expressed different opinions on what the Prophet intended to write when he asked for writing materials. Some suggested that he wanted to state the name of a person who would be his successor as ruler of the Muslim state, so that there would be no disagreement. Others suggested that he wanted to outline the most important legislation, in concise form, so that there would be no disagreement over these. The Prophet intended to write this document when he thought it would serve the interests of the Muslim community, or because he received revelations to this effect. Subsequently he felt that it was better to abandon the idea, or he received further revelations cancelling the earlier order.

All scholars who commented on this hadith agree that what 'Umar said tells of his profound insight and great knowledge. He feared that the Prophet might write things that the Muslims might not be able to undertake,

and that they then would incur punishment for abandoning them; in essence, they would have been written down and subject to neither discretion nor reasoning. Hence, ʿUmar said that God's Book was sufficient, as God says: 'No single thing have We left out of the Book'. (6: 38) He also says: 'This day I have perfected your religion for you'. (5: 3) ʿUmar was aware that God had made Islam perfect and thus, the Muslim community cannot go astray. He wanted to lighten the matter for the Prophet (peace be upon him). ʿUmar was certainly of greater insight than Ibn ʿAbbās and those who agreed with him.

In his book *Dalā'il al-Nubuwwah*, Imam Abu Bakr Ahmad ibn al-Ḥusayn al-Bayhaqī says:

> ʿUmar wanted to comfort God's Messenger (peace be upon him) when his illness was getting more severe. Had the Prophet intended to write something that was absolutely necessary, he would not have abandoned this because of the dispute between his companions, or for any other reason, because of God's order: 'Messenger, proclaim what has been revealed to you by your Lord'. (5: 67)

We note that he did not refrain from proclaiming whatever else was revealed to him, despite anyone's opposition or hostility. He also gave specific orders at that time of his illness, such as the evacuation of the Jews from Arabia. Al-Bayhaqī adds:

> Sufyān ibn ʿUyaynah quotes earlier scholars suggesting that the Prophet wanted to write down the choice of Abu Bakr as the ruler to succeed him, but he then abandoned the idea, knowing that this was already in God's will. He also wanted to have something written down at the beginning of his illness, when he complained of his severe headache, then he changed his mind. He said: 'God and the believers will not accept anyone other than Abu Bakr'. He then alerted his community to choose Abu Bakr as he deputized him to

lead the congregational prayer when he himself was unable to attend the prayer during his illness.

If the aim was to explain religious rulings and remove the possibility of differences, ʿUmar was aware that this had already been done, as testified by God's words: 'This day I have perfected your religion for you'. (5: 3) He realized that whatever happens until the Day of Judgement, there is, in the Qur'an and the Sunnah, what will be relevant to it, either in text or in import. To require the Prophet to write that down during his illness and severe pain was too hard. Therefore, ʿUmar felt that what had already been explained, by text or import, was sufficient, and it would keep the door open for exercising scholarly reasoning and deducing rulings concerning matters of detail in the light of the clear principles given. The Prophet had already told his community: 'When a judge exercises reasoning and arrives at the right ruling, he earns double reward, and if he is mistaken, he earns a single reward'. This clearly shows that certain rulings are left to be deduced by scholars, who will earn good reward for their efforts. ʿUmar felt that it was right to leave matters at this point so as to give scholars their due, leaving them to exercise scholarly reasoning, and to comfort the Prophet (peace be upon him)…. The fact that the Prophet did not object to what ʿUmar said indicates that he approved of it.[vi]

Imam Ḥamad ibn Muhammad al-Khaṭṭābī said:

It must not be understood that ʿUmar might have thought that God's Messenger (peace be upon him) could make a mistake or do something that was not compatible with his status. It was rather the fact that ʿUmar realized that the Prophet was in severe pain and close to death, feeling distressed. Therefore, ʿUmar feared that what he might say could be of the type of what a person says when weakened by illness, enabling some hypocrites to speak ill of religion. The

Prophet's companions used to question some matters when he had not given a decisive word about them. For example, they questioned him at the time of al-Ḥudaybiyah when he made the peace treaty with the Quraysh. However, when he made a firm order about anything, none of them questioned it.

Most scholars agree that mistakes could be made by the Prophet in matters where no revelation was bestowed from on high. All scholars agree, however, that if he made such a mistake, it would not be taken without questioning. God certainly gave him a higher rank than all creation, yet He did not make him immune to any eventuality that may affect all human beings. On some occasions, the Prophet made a mistake in prayer. Therefore, something of the sort could occur during his illness. In such a scenario, matters should be ascertained first. It is for this reason that ʿUmar questioned this case.

It is narrated that the Prophet said: 'Different views within my community is an aspect of mercy'. ʿUmar felt this to be a wise statement. However, two men objected to this hadith: one of them, ʿAmr ibn Baḥr al-Jāḥiẓ, is surrounded by question marks about his faith, and the other, Isḥāq ibn Ibrāhīm al-Mūṣilī, is well-known for his loose morality. When he wrote his book about songs and went deep into such falsehood, he was not satisfied with bearing all such sin, but went further abusing Hadith scholars, alleging that they narrate what they do not know. Both he and al-Jāḥiẓ claimed that if different views are an aspect of mercy, then unity of views means affliction. No one insists on this except an ignorant person or one who ignores fact. God says: 'It is out of His mercy that He has made for you the night and the day…' (28: 73). He describes the night as mercy, but that does not mean that the day is affliction. This is undoubtedly clear.

Difference in religion is of three types. The first concerns the Maker and His Oneness. To deny this is to disbelieve. The second

concerns His attributes and His will. To deny these is deviation. The third are differences on matters of detail that allow more than one way. This is what God has made as a mercy and an honour for scholars. This is what is meant by the hadith quoting the Prophet: 'Different views within my community is an aspect of mercy'.

Imam Muhammad ibn ʿAlī ibn ʿUmar al-Māzarī said:

> It may be asked: how could the Prophet's companions differ regarding what the Prophet wanted to write although he said: 'Bring me… and I will write'? How could they disobey his order? There is no disagreement that orders are associated with indications that alter their status. Thus, they are transferred from the case of recommendation, according to scholars who say all orders are originally recommendation, to that of obligation. By contrast, according to scholars who say all orders are originally obligatory, certain indications transfer them from that obligatory status to one of preference and recommendation. Indications also transfer the imperative, 'do,' from command to permission or giving a choice, or some other meaning. Perhaps there were some indications from the Prophet pointing out that he was not ordering them, but giving them a choice. Their reasoning differed and consequently their attitudes differed. This indicates that they exercised reasoning in religious matters. ʿUmar's reasoning showed him that it was better not to have this written document, and perhaps he felt that the Prophet did not firmly intend it. This is perhaps what they meant when they said that the Prophet was unconscious, or that his pain was very severe. There were probably other indications showing that his attitude was different from what was familiar to them when he delivered religious information. ʿUmar recognized this but others did not.
>
> Perhaps ʿUmar feared that the hypocrites might use this as an opportunity to criticize the well-known Islamic principles, with the

Prophet stating these in a document to be written in a closed session with a few individuals. They might have added something to it to create doubts in the minds of people with sickness at heart. Hence, ʿUmar said:

> ‘We have the Qur’an, and God’s Book is sufficient for us’.

When the Prophet’s Companions disputed, with some wanting to get the writing done and others saying that God’s Book was enough, some said: ‘What is wrong with him? Is he unaware?’ This was a rhetorical question inviting a negative answer, because if he was unaware, it means that he did not realize the meaning of what he was saying, like someone hallucinating. Such a situation does not happen to a messenger of God. The rhetorical question was meant in response to those who did not wish to have anything written down. It is as though the person saying it was actually advising the others not to neglect the order of God’s Messenger. Rather, he was advocating that the writing should be done immediately. When ʿUmar said: ‘God’s Book is sufficient for us’, he was responding to those who held the different view; it was by no means an objection to the Prophet’s order, but God knows best.

In hadith No. 3703, the Prophet told his disputing Companions: ‘Leave me; what I am into is better’. The Prophet’s order meant that they must stop their argument. He was preoccupied with getting ready to meet God, focusing his thoughts on that, and this was certainly better than their arguments.

The Prophet tells his Companions to ‘expel the idolaters from the Island of Arabia’. Abu ʿUbayd quotes al-Aṣmaʿī saying that the Island of Arabia extends from Aden in Yemen to the country side of Iraq in length, and in width from Jeddah to the outskirts of Syria. Abu ʿUbaydah said that it extends in length from Ḥafar Abi Mūsā to the farthest point in Yemen, and in width from the Yarīn Sands to Munqaṭaʿ al-Samāwah. It is said that it is called an Island because it is surrounded by seas and great bodies of water.

Linguistically, the Arabic word *jazīrah*, which means ‘island’, is derived from a root that means ‘cut off’. Thus, an island is cut off from other dry lands. It is called Arabia because it was the land of the Arabs in pre-Islamic days: it is their native land and the land of their ancestors.

Al-Harawī mentions that Mālik considered Madinah to be the ‘Island of the Arabs’, but the correct and well-known view of Mālik is that it includes Makkah, Madinah, Yamāmah and Yemen. Mālik, al-Shāfiʿī and other scholars apply this hadith and consider it imperative that unbelievers should not be allowed into the Island of Arabia. They said, that unbelievers must not be enabled to live in it. However, al-Shāfiʿī applies this ruling to only a portion of the Arabian Peninsula, which is the Hijaz, i.e., Makkah, Madinah, Yamāmah and their surrounding areas, but not Yemen. In support of his view, al-Shāfiʿī cites other evidence, which is clearly mentioned in his books and the books of his disciples.

Scholars say that unbelievers are not prevented from travelling through the Hijaz, but they are not allowed a stay of over three days. Al-Shāfiʿī and scholars sharing his view state an exception, which is Makkah and its Ḥaram area: it is not permissible to allow a non-Muslim to enter this area at any time. If someone enters it stealthily, he must be forcibly removed. If he dies inside the Ḥaram area and is buried there, his body must be taken out if it remains intact. This is the view of al-Shāfiʿī and the great majority of scholars. Abu Ḥanīfah, however, permits unbelievers’ entry into the Ḥaram area. The basis of the view of the majority of scholars is the Qur’anic verse that says: ‘Believers, know that the idolaters are certainly impure. So, let them not come near the Sacred Mosque after this year is ended’. (9: 28). But God knows best.

The second recommendation of the Prophet was: ‘Give a delegation gifts similar to what I used to give’. Scholars say that this is a clear order by the Prophet (peace be upon him) to be hospitable to visiting delegations, making them feel very welcome and giving them gifts before they leave. This is meant to win their hearts so that they would have a good and lasting

impression of the Muslim community, and to help them on their journey. *Qadi* ʿIyāḍ said that scholars make clear that such hospitable and welcoming treatment should be extended to all delegations, be they Muslims or not, because a delegation of unbelievers will mostly visit on an errand that serves the interests of both parties.

The final sentence of the hadith says: 'He did not mention the third, or perhaps he mentioned it but I have forgotten it'. The one who did not mention the third is Ibn ʿAbbās, but the one who forgot it, if it was mentioned, was Saʿīd ibn Jubayr. Al-Muhallab said that the third was getting the army commanded by Usāmah ibn Zayd ready to start out on their mission. *Qadi* ʿIyāḍ said that another possibility could be the Prophet's other injunction: 'Do not make my grave a worshipped idol'. In *al-Muwaṭṭa'*, Mālik mentions its meaning alongside the removal of the Jews in a hadith narrated by ʿUmar.

In addition to what we have explained, this hadith includes other useful points. One of these is the permissibility of writing down useful information and teachings. We explained this on several occasions, mentioning the two different hadiths related to it. We also explained that the early scholars differed on this point, but subsequently all scholars are agreed upon its permissibility. We explained the hadith that prevents writing. Another useful point is the permissibility of using allegory and figurative speech. The Prophet mentioned: 'I will write for you'. He meant that he would order someone to write down what he would dictate, because the Prophet was unlettered and he never wrote anything with his own hand. A further point is that illness may afflict a prophet but it does not indicate that a person who is unwell is not a good person.

Transmission

At the end of hadith No. 3703, we have the following: 'Abu Isḥāq Ibrāhīm said: al-Ḥasan ibn Bishr narrated: he said: Sufyān narrated: this hadith'. This means that Abu Isḥāq Ibrāhīm, a disciple of Muslim, equals Muslim in

reporting this hadith from one narrator who narrates from Sufyān ibn ʿUyaynah. In other words, Abu Isḥāq's chain of transmission of this hadith is one narrator shorter than what he narrates normally from Muslim through Sufyān ibn ʿUyaynah.

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i. Related by al-Bukhari, 2740, 4460 and 5022; al-Tirmidhī, 2119; al-Nasā'ī, 3622; Ibn Mājah, 2696.

ii. Related by Abu Dāwūd, 2863; al-Nasā'ī, 3623 and 3624; Ibn Mājah, 2695.

iii. Related by al-Bukhari, 2741 and 4459; al-Nasā'ī, 3624 and 3625; Ibn Mājah, 1626.

iv. Related by al-Bukhari, 3053, 3168 and 4431; Abu Dāwūd in a shorter version, 3029.

v. Related by al-Bukhari, 114, 4432, 5669 and 7366.

vi. Al-Bayhaqī, *Dalā'il al-Nubuwwah*, Beirut and Cairo, 1988, Vol. 7 pp. 184-185.

BOOK
OF
PLEDGES

CHAPTER 1

A PLEDGE [i.e., *NADHR*] MUST BE FULFILLED

[3706–1]. (Dar al-Salam 4017–4018) Yaḥyā ibn Yaḥyā al-Tamīmī and Muhammad ibn Rumḥ ibn al-Muhājir narrated:[i] both said: al-Layth reported [H]. Also, Qutaybah ibn Saʿīd narrated: Layth narrated; from Ibn Shihāb; from ʿUbaydullāh ibn ʿAbdullāh; from Ibn ʿAbbās; that **‘Saʿd ibn ʿUbādah asked God’s Messenger (peace be upon him) concerning a pledge made by his mother, but she died before she could fulfil it. God’s Messenger said: “Then fulfil it on her behalf”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، وَمُحَمَّدُ بْنُ رُمْحِ بْنِ الْـمُهَاجِرِ، قَالا: أَخْبَرَنَا اللَّيْثُ، ح. وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ شِهَابٍ، عَنْ عُبَيْدِ اللهِ بْنِ عَبْدِ اللهِ، عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: اسْتَفْتَى سَعْدُ بْنُ عُبَادَةَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي نَذْرٍ كَانَ عَلَى أُمِّهِ، تُوُفِّيَتْ قَبْلَ أَنْ تَقْضِيَهُ. قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «فَاقْضِهِ عَنْهَا».

Yaḥyā ibn Yaḥyā narrated: he said: I read out to Mālik [H]. Also, Abu Bakr ibn Abi Shaybah, ʿAmr al-Nāqid and Isḥāq ibn Ibrāhīm narrated; from Ibn ʿUyaynah [H]. And, Ḥarmalah ibn Yaḥyā narrated to me; Ibn Wahb reported; Yūnus reported to me [H]. Further, Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated; both said: ʿAbd al-Razzāq reported; Maʿmar reported [H]. Also,

ʿUthmān ibn Abi Shaybah narrated; ʿAbdah ibn Sulaymān narrated; from Hishām ibn ʿUrwah; from Bakr ibn Wā'il; all of these from al-Zuhrī; with the same chain of transmission stated by al-Layth, and **the same meaning as his text.**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ عَنِ ابْنِ عُيَيْنَةَ، ح. وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَبْدُ بْنُ حُمَيْدٍ، قَالا: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، ح. وَحَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ بَكْرِ بْنِ وَائِلٍ، كُلُّهُمْ عَنِ الزُّهْرِيِّ: بِإِسْنَادِ اللَّيْثِ وَمَعْنَى حَدِيثِهِ.

Text Explanation

All Muslims agree that a pledge is valid and must be fulfilled if it promises to do what is good and done in obedience of God. If one pledges to do what constitutes disobedience of God, or some neutral thing, such as pledging to go to the market, then the pledge is not valid and constitutes no commitment. It does not require an indemnity. This is the view of our school and the majority of scholars, although Ahmad and a group of scholars say that it requires the indemnity of a broken oath.

When Saʿd asked the Prophet about his deceased mother's pledge, the Prophet told him to fulfil it on her behalf. This provides evidence that duties incumbent on a deceased person prior to his death should be fulfilled on his behalf. If such duties are financial, their fulfilment is unanimously agreed upon by scholars. Physical obligations are subject to different views which we explained at different places in this commentary. Furthermore, the financial obligations due from the deceased, such as zakat, indemnity and pledges must be fulfilled, whether the deceased made a will to fulfil them or not, just like outstanding debts owed to other people. This is the view of al-

Shāfiʿī and other scholars. On the other hand, Mālik, Abu Ḥanīfah and their disciples say that nothing of such obligations must be fulfilled on behalf of the deceased unless he has made a will to this effect. Mālikī scholars hold different views concerning the payment of outstanding zakat if the deceased has not made a will to pay it, but God knows best.

Qadi ʿIyāḍ said that there are different reports about the pledge by Saʿd's mother. It is suggested that it was a general pledge, but other suggestions mention fasting, freeing a slave and charitable payment. Every suggestion relies on a hadith narrated about Saʿd's mother and her story. Yet the pledge could be something different to all such reports, and it appears that it was financial or unspecified. This last possibility is strengthened by a hadith related by al-Dāraquṭnī from Mālik which mentions that the Prophet said to Saʿd: 'Give drinking water on her behalf'. The hadith mentioning fasting on her behalf is defective, according to Hadith scholars, because of differences between its narrators regarding its chain of transmission, text and ambiguity. The report that Saʿd asked: 'Should I free a slave on her behalf' is also questionable, because freeing a slave is a financial commitment, and the hadith does not state that she had an obligation to free a slave, but God knows best.

The view of our Shāfiʿī School and the majority of scholars is that it is not obligatory for an heir to fulfil a pledge owed by a deceased person, if it is not financial, or if it is financial and the deceased has not left enough to fulfil it. But it is desirable that the heir should do so. However, Ẓāhirī scholars say that it is a duty of an heir to fulfil such a pledge, citing this hadith as evidence in support of their view. Yet, the hadith admits the possibility that Saʿd fulfilled his mother's pledge out of her estate, or that he donated it. The hadith does not clearly state that such fulfilment of his mother's pledge was his duty, but God knows best.

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i. Related by al-Bukhari, 2761, 6698 and 6959; Abu Dāwūd, 3307; al-Tirmidhī, 1546; al-Nasā'ī, 3661, 3662, 3664, 3665, 3827 and 3328; Ibn Mājah, 2132.

CHAPTER 2

THE DISCOURAGEMENT OF MAKING A PLEDGE

[3707–2]. (Dar al-Salam 4019) Zuhayr ibn Ḥarb and Isḥāq ibn Ibrāhīm narrated to me:[i] Jarīr (Isḥāq said: ‘reported’ and Zuhayr said: ‘narrated’); from Manṣūr; from ʿAbdullāh ibn Murrah; from ʿAbdullāh ibn ʿUmar. He said: **‘One day, God’s Messenger (peace be upon him) kept discouraging us from making pledges and said that “A pledge does not repel anything; it is only a means to loosen a miser’s hand”.’**

(وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ. (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ زُهَيْرٌ حَدَّثَنَا جَرِيرٌ، عَنْ مَنْصُورٍ، عَنْ عَبْدِ اللهِ بْنِ مُرَّةَ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ قَالَ: أَخَذَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَوْمًا يَنْهَانَا عَنِ النَّذْرِ وَيَقُولُ: «إِنَّهُ لاَ يَرُدُّ شَيْئًا وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الشَّحِيحِ».

[3708–3]. (Dar al-Salam 4020) Muhammad ibn Yaḥyā narrated: Yazīd ibn Abi Ḥakīm narrated; from Sufyān; from ʿAbdullāh ibn Dīnār; from Ibn ʿUmar; from the Prophet (peace be upon him); that he said: **‘A pledge neither hastens nor delays anything; it is only a means to get a miser to give’.**

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، حَدَّثَنَا يَزِيدُ بْنُ أَبِي حَكِيمٍ، عَنْ سُفْيَانَ، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «النَّذْرُ لاَ يُقَدِّمُ شَيْئًا وَلاَ يُؤَخِّرُهُ، وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الْبَخِيلِ».

[3709–4]. (Dar al-Salam 4021–4022) Abu Bakr ibn Abi Shaybah narrated: Ghundar narrated; from Shuʿbah [H]. Also, Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn Bashshār's text); Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Manṣūr; from ʿAbdullāh ibn Murrah; from Ibn ʿUmar; from the Prophet (peace be upon him) that **'He discouraged making pledges and said: "A pledge does not bring any good thing; it is only a means to get a miser to give".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا غُنْدَرٌ، عَنْ شُعْبَةَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْمُثَنَّى)، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ مَنْصُورٍ، عَنْ عَبْدِ اللهِ بْنِ مُرَّةَ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ نَهَى عَنِ النَّذْرِ، وَقَالَ: «إِنَّهُ لاَ يَأْتِي بِخَيْرٍ وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الْبَخِيلِ».

Muhammad ibn Rāfiʿ narrated to me: Yaḥyā ibn Adam narrated; Mufaḍḍal narrated [H]. Also, Muhammad ibn al-Muthannā and Ibn Bashshār narrated; both said: ʿAbd al-Raḥmān narrated; from Sufyān; both from Manṣūr; with this chain of transmission: **a similar text to Jarīr's narration.**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا يَحْيَى بْنُ آدَمَ، حَدَّثَنَا مُفَضَّلٌ، ح. وَحَدَّثَنَا مُحَمَّدُ، بْنُ الْمُثَنَّى وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ، عَنْ سُفْيَانَ، كِلاَهُمَا عَنْ مَنْصُورٍ، بِهَذَا الإِسْنَادِ نَحْوَ

[3710–5]. (Dar al-Salam 4023) Qutaybah ibn Saʿīd narrated:[ii] ʿAbd al-ʿAzīz (meaning al-Darāwardī) narrated; from al-ʿAlā’; from his father; from Abu Hurayrah; that **‘God’s Messenger (peace be upon him) said: “Do not make pledges: a pledge does not change anything that God wills; it is only a means to make a miser give”.’**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا عَبْدُ الْعَزِيزِ (يَعْنِي الدَّرَاوَرْدِيَّ)، عَنِ الْعَلاَءِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا تَنْذُرُوا. فَإِنَّ النَّذْرَ لاَ يُغْنِي مِنَ الْقَدَرِ شَيْئًا، وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الْبَخِيلِ».

[3711–6]. (Dar al-Salam 4024) Muhammad ibn al-Muthannā and Ibn Bashshār narrated: both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated. He said: I heard al-ʿAlā’ narrating from his father; from Abu Hurayrah; from the Prophet (peace be upon him) that **‘He discouraged making a pledge and said: “It does not repel God’s will, but it is a means to make a miser pay”.’**

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، قَالَ سَمِعْتُ الْعَلاَءَ، يُحَدِّثُ عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، أَنَّهُ نَهَى عَنِ النَّذْرِ وَقَالَ: «إِنَّهُ لاَ يَرُدُّ مِنَ الْقَدَرِ، وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الْبَخِيلِ».

[3712–7]. (Dar al-Salam 4025–4026) Yaḥyā ibn Ayyūb, Qutaybah ibn Saʿīd and ʿAlī ibn Ḥujr narrated: they said: Ismāʿīl (who is Ibn Jaʿfar) narrated; from ʿAmr (who is Ibn Abi ʿAmr); from ʿAbd al-

Raḥmān al-Aʿraj; from Abu Hurayrah; that the Prophet (peace be upon him) said: **‘A pledge does not bring a human being nearer to anything God has not willed for him, but a pledge merely coincides with God’s will. Thus, a miser is made to pay what the miser had no intention of giving’.**

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَعَلِيُّ بْنُ حُجْرٍ، قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنْ عَمْرٍو (وَهْوَ ابْنُ أَبِي عَمْرٍو)، عَنْ عَبْدِ الرَّحْمَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِنَّ النَّذْرَ لاَ يُقَرِّبُ مِنِ ابْنِ آدَمَ شَيْئًا لَمْ يَكُنِ اللهُ قَدَّرَهُ لَهُ. وَلَكِنِ النَّذْرُ يُوَافِقُ الْقَدَرَ، فَيُخْرَجُ بِذَلِكَ مِنَ الْبَخِيلِ مَا لَمْ يَكُنِ الْبَخِيلُ يُرِيدُ أَنْ يُخْرِجَ».

Qutaybah ibn Saʿīd narrated: Yaʿqūb (meaning Ibn ʿAbd al-Raḥmān al-Qāriy) and ʿAbd al-ʿAzīz (meaning al-Darāwardī) narrated; both from ʿAmr ibn Abi ʿAmr; with this chain of transmission: **the same text.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا يَعْقُوبُ (يَعْنِي ابْنَ عَبْدِ الرَّحْمَنِ الْقَارِيَّ)، وَعَبْدُ الْعَزِيزِ (يَعْنِي الدَّرَاوَرْدِيَّ)، كِلاَهُمَا عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو، بِهَذَا الإِسْنَادِ مِثْلَهُ.

Text Explanation

The hadiths in this chapter discourage making a pledge, which means that a person pledges to God to offer some act of worship or pay a specified amount in charity if what he desires is fulfilled, such as passing an exam, or making a profitable deal in business, or recovering from an illness, etc. The hadiths state that a pledge changes nothing of God’s will, but it is a means to make a miser give what he would not normally give.

Imam al-Māzarī said that it is probable that the reason for the Prophet's discouragement of pledges is that the person who makes a pledge commits himself to it. As such, he does it as a burdensome obligation. Alternatively, he may feel that whatever he pledged is being done in return for the fulfilment of what he desired. This diminishes his reward, because worship should be done purely for God's sake.

Qadi ʿIyāḍ said that it is possible that the discouragement of making a pledge is due to the fact that some ignorant people may think that a pledge repels God's will or stops what God has willed. Therefore, the Prophet discouraged it so that no ignorant person could entertain such thoughts. The phraseology of the hadiths confirms this, but God knows best.

The Prophet said in hadith No. 3709 that a pledge does no good, which means that it does not repel anything God has willed, as explained in other narrations. He says that it is a means to make a miser give. This means that a person making a pledge does not offer the worship he pledges voluntarily, without looking for a result out of it. He does it in return for, say, the recovery from illness, etc. He is a miser in regard to voluntary worship, and his pledge is the means that makes him do it.

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i. Related by al-Bukhari, 6608 and 6693; Abu Dāwūd, 3287; al-Nasā'ī, 3810, 3811 and 3812; Ibn Mājah, 2122.

ii. Related by al-Tirmidhī, 1538; al-Nasā'ī, 3814.

CHAPTER 3

PLEDGES THAT MUST NOT BE FULFILLED

[3713–8]. (Dar al-Salam 4027) Zuhayr ibn Ḥarb and ʿAlī ibn Ḥujr al-Saʿdī narrated to me (Zuhayr's text):[i] both said: Ismāʿīl ibn Ibrāhīm narrated; Ayyūb narrated; from Abu Qilābah; from Abu al-Muhallab; from ʿImrān ibn Ḥuṣayn. He said: **'The Thaqīf tribe were allied with the ʿUqayl tribe. Thaqīf took two of the Prophet's companions captive, and the Prophet's companions took a man from the ʿUqayl captive, taking with him [a she-camel named] al-ʿAḍbā'. God's Messenger passed by him as he was tied up. He called out [to the Prophet]: "Muhammad!" The Prophet came to him and asked: "What do you want?" He said: "For what reason have you taken me captive? And why have you taken the fastest camel at pilgrimage?" The Prophet said (to clarify that it was not groundless): "I have taken you captive for the offence of your allies, the Thaqīf". He left him, but the man called him again: "Muhammad! Muhammad!" God's Messenger was kind and compassionate. He went back to him and asked him: "What is it you want?" He said: "I am a Muslim". He said: "Had you said this when you were master of your affairs, you would have achieved full success". The Prophet went away, and the man again called him:**

“Muhammad! Muhammad!” The Prophet came back to him and asked him: “What do you need?” He said: “I am hungry; give me some food; and I am thirsty; give me a drink”. The Prophet said: “Take what you need”. He was then freed in exchange for the two men.’

He said: **‘And a woman from the Anṣār was taken captive, as was [the she-camel] al-ʿAḍbā’. The woman was tied up with ropes. The people used to keep their cattle at night in front of their homes. One night, she was able to free herself, and she went towards the camels. When she approached a male camel, it would make a noise, and she left it. Eventually, she reached [the she-camel] al-ʿAḍbā’, which did not make any noise. She was a well-trained camel. The woman rode at the rear of her back and poked the camel. The she-camel ran. When the people realized that she had escaped, they chased her, but they could not catch up with her. The woman pledged to God that if He saved her, riding the she-camel, she would slaughter her.**

When she arrived in Madinah and the people saw her, they said: al-ʿAḍbā’, God’s Messenger’s she-camel. She said that she made a pledge that if God saved her riding the she-camel, she would slaughter her. They reported this to God’s Messenger. He said: “Limitless is God in His glory! How ill she is rewarding the she-camel, pledging to God to slaughter it if God saved her riding it! A pledge to do a disobedience [of God] must not be fulfilled; nor a pledge in respect of something one does not own”.’

In Ibn Ḥujr’s narration: **‘No pledge to disobey God is valid’.**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، وَعَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ (وَاللَّفْظُ لِزُهَيْرٍ) قَالا: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا أَيُّوبُ، عَنْ أَبِي قِلاَبَةَ، عَنْ أَبِي الْـمُهَلَّبِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ: كَانَتْ ثَقِيفُ حُلَفَاءَ لِبَنِي عُقَيْلٍ، فَأَسَرَتْ ثَقِيفُ رَجُلَيْنِ مِنْ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَأَسَرَ أَصْحَابُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجُلاً مِنْ بَنِي عُقَيْلٍ، وَأَصَابُوا مَعَهُ الْعَضْبَاءَ. فَأَتَى عَلَيْهِ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهْوَ فِي الْوَثَاقِ، قَالَ: يَا مُحَمَّدُ. فَأَتَاهُ فَقَالَ: «مَا شَأْنُكَ»؟ فَقَالَ: بِمَ أَخَذْتَنِي؟ وَبِمَ أَخَذْتَ سَابِقَةَ الْحَاجِّ؟ فَقَالَ إِعْظَامًا لِذَلِكَ: «أَخَذْتُكَ بِجَرِيرَةِ حُلَفَائِكَ ثَقِيفَ». ثُمَّ انْصَرَفَ عَنْهُ فَنَادَاهُ، فَقَالَ: يَا مُحَمَّدُ، يَا مُحَمَّدُ. وَكَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَحِيمًا رَقِيقًا، فَرَجَعَ إِلَيْهِ فَقَالَ: «مَا شَأْنُكَ». قَالَ: إِنِّي مُسْلِمٌ. قَالَ: «لَوْ قُلْتَهَا وَأَنْتَ تَمْلِكُ أَمْرَكَ، أَفْلَحْتَ كُلَّ الْفَلاَحِ». ثُمَّ انْصَرَفَ. فَنَادَاهُ فَقَالَ: يَا مُحَمَّدُ، يَا مُحَمَّدُ. فَأَتَاهُ فَقَالَ: «مَا شَأْنُكَ»؟ قَالَ: إِنِّي جَائِعٌ فَأَطْعِمْنِي، وَظَمْآنُ فَأَسْقِنِي. قَالَ: «هَذِهِ حَاجَتُكَ». فَفُدِيَ بِالرَّجُلَيْنِ.

قَالَ: وَأُسِرَتِ امْرَأَةٌ مِنَ الأَنْصَارِ، وَأُصِيبَتِ الْعَضْبَاءُ. فَكَانَتِ الْـمَرْأَةُ فِي الْوَثَاقِ، وَكَانَ الْقَوْمُ يُرِيحُونَ نَعَمَهُمْ بَيْنَ يَدَىْ بُيُوتِهِمْ. فَانْفَلَتَتْ ذَاتَ لَيْلَةٍ مِنَ الْوَثَاقِ، فَأَتَتِ الإِبِلَ. فَجَعَلَتْ إِذَا دَنَتْ مِنَ الْبَعِيرِ رَغَا، فَتَتْرُكُهُ. حَتَّى تَنْتَهِيَ إِلَى الْعَضْبَاءِ، فَلَمْ تَرْغُ. قَالَ: وَهِيَ نَاقَةٌ مُنَوَّقَةٌ. فَقَعَدَتْ فِي عَجُزِهَا، ثُمَّ زَجَرَتْهَا فَانْطَلَقَتْ. وَنَذِرُوا بِهَا، فَطَلَبُوهَا، فَأَعْجَزَتْهُمْ. قَالَ: وَنَذَرَتْ لِلهِ إِنْ نَجَّاهَا اللهُ عَلَيْهَا لَتَنْحَرَنَّهَا.

فَلَمَّا قَدِمَتِ الْـمَدِينَةَ رَآهَا النَّاسُ، فَقَالُوا: الْعَضْبَاءُ نَاقَةُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَقَالَتْ: إِنَّهَا نَذَرَتْ إِنْ نَجَّاهَا اللهُ عَلَيْهَا لَتَنْحَرَنَّهَا. فَأَتَوْا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَذَكَرُوا ذَلِكَ لَهُ. فَقَالَ: «سُبْحَانَ اللهِ. بِئْسَمَا جَزَتْهَا! نَذَرَتْ لِلهِ إِنْ نَجَّاهَا اللهُ عَلَيْهَا لَتَنْحَرَنَّهَا! لا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةٍ، وَلا فِيمَا لا يَمْلِكُ الْعَبْدُ».

وَفِي رِوَايَةِ ابْنِ حُجْرٍ: «لا نَذْرَ فِي مَعْصِيَةِ اللهِ».

[3714–000]. (Dar al-Salam 4028) Abu al-Rabīʿ al-ʿAtakī narrated: Ḥammād (meaning Ibn Zayd) narrated [H]. Also, Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated; from ʿAbd al-Wahhāb al-Thaqafī; both from Ayyūb; with the same chain of transmission: **a similar text. However, in Ḥammād's narration: 'al-ʿAḍbā' belonged to a man from the ʿUqayl tribe and was one of the fastest camels on pilgrimage'. Also in his narration: 'She found a she-camel used for riding and travel'. And in al-Tahaqfī's narration: 'She was a well-trained she-camel'.**

حَدَّثَنَا أَبُو الرَّبِيعِ الْعَتَكِيُّ، حَدَّثَنَا حَمَّادٌ (يَعْنِي ابْنَ زَيْدٍ)، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ، عَنْ عَبْدِ الْوَهَّابِ الثَّقَفِيِّ، كِلاَهُمَا عَنْ أَيُّوبَ، بِهَذَا الإِسْنَادِ: نَحْوَهُ. وَفِي حَدِيثِ حَمَّادٍ قَالَ: كَانَتِ الْعَضْبَاءُ لِرَجُلٍ مِنْ بَنِي عُقَيْلٍ، وَكَانَتْ مِنْ سَوَابِقِ الْحَاجِّ. وَفِي حَدِيثِهِ أَيْضًا: فَأَتَتْ عَلَى نَاقِةٍ ذَلُولٍ مُجَرَّسَةٍ. وَفِي حَدِيثِ الثَّقَفِيِّ: وَهِيَ نَاقَةٌ مُدَرَّبَةٌ.

Text Explanation

When the captive asked the Prophet on what basis he was taken prisoner, he also asked about the she-camel, referring to it as 'the fastest at pilgrimage'. This was the Prophet's own she-camel, al-ʿAḍbā'. We referred in our commentary on the Book of Pilgrimage to al-ʿAḍbā', al-Qaṣwā' and al-Jadʿā', and whether they were three different camels or one she-camel with three names. The Prophet explained to the man that he was taken in retaliation for the crime committed by his allies, the Thaqīf.

The captive told the Prophet that he was a Muslim. The Prophet's response was: 'Had you said this when you were master of your affairs, you would have achieved full success'. Had the man declared himself a Muslim when he was free, before being taken captive, he would not have been taken

captive. Thus, he would have gained the great privilege of being a Muslim, immunity from captivity and his property could not have been taken as war gain. If he accepted Islam after being taken captive, he would be safe from execution. The options available to the Muslim community regarding him would be to make him a slave, set him free as a favour, or charge ransom for freeing him. This shows the permissibility of taking ransom in return for freeing a captive. It also shows that if a captive embraces Islam, this does not forfeit the right of those who take him captive. This is different from his acceptance of Islam before being taken captive.

The hadith does not mention that when the captive accepted Islam and the ransom was paid for him, he went back to the land of disbelievers. If this is confirmed and he was able to publicly confirm his acceptance of Islam, because, say, he enjoyed protection by a powerful clan, his return there was not forbidden. Hence, there is no problem with the hadith. Al-Māzarī questioned this and asked: how could a Muslim be returned to the land of the unbelievers? As I have explained, this questioning is not correct.

The hadith mentions the case of the Anṣārī woman who was taken captive. She was Abu Dharr's wife. When her case was reported to the Prophet, he said: 'No pledge to disobey God is valid'. It is clear thereby that if a person pledges to do something that God forbids, such as drinking intoxicants, the pledge is invalid and has no effect. He is not required to make any compensation, not even for a broken oath. This is the view expressed by Mālik, al-Shāfiʿī, Abu Ḥanīfah, Dāwūd and the majority of scholars. Ahmad says that such a pledge requires the same indemnity as a broken oath. His view is based on the hadith narrated by ʿImrān ibn al-Ḥuṣayn and ʿĀ'ishah from the Prophet (peace be upon him): 'No pledge of disobedience is valid and its indemnity is that of a broken oath'. However, this hadith is generally graded as 'lacking authenticity'. The majority of scholars cite in support of their view the hadith narrated by ʿImrān ibn Ḥuṣayn and mentioned in this Book.

The Prophet also states that a pledge in respect of a particular thing one does not own is not valid. For example, a person may say: ‘If God grants this relative of mine full recovery, I shall set free the slave of so-and-so, or give such a portion of his property as charity’, etc. Such a pledge is invalid. This is different from pledging to do something in the future with what one does not own at present, such as saying: ‘If God grants full recovery to this relative of mine, I owe to God to give so much in charity’, but the person does not have that amount or anything near it. Such a pledge is, however, valid, and if the person recovers, he owes that charity.

The hadith shows that it is permissible for a woman to travel on her own, unaccompanied by a husband, a close relative or anyone, if her travel is necessary, such as travelling to join the Muslim community in the land of Islam, or to run away from someone who is threatening her, etc. The prohibition of a woman travelling alone is understood to refer to unnecessary travel.

The hadith provides evidence supporting the view of al-Shāfiʿī and others that if unbelievers take war gains belonging to a Muslim, they do not own it. Abu Ḥanīfah and other scholars say that they own it if they take it to their land, i.e., the land of war. Al-Shāfiʿī and scholars in agreement with him cite this hadith as evidence, and this is clearly apparent, but God knows best.

Transmission

The chain of transmission of this hadith includes a narrator called by his appellation, Abu al-Muhallab. His name is ʿAbd al-Raḥmān ibn ʿAmr, but his name is variously given as Muʿāwiyah ibn ʿAmr, or ʿAmr ibn Muʿāwiyah, or al-Naḍr ibn ʿAmr, and he belonged to Basrah in Iraq, but God knows best.

i. Related by Abu Dāwūd, 3316.

CHAPTER 4

A PLEDGE TO WALK UP TO THE KAʿBAH

[3715–9]. (Dar al-Salam 4029) Yaḥyā ibn Yaḥyā al-Tamīmī narrated:[i] Yazīd ibn Zurayʿ reported; from Ḥumayd; from Thābit; from Anas [H]. Also, Ibn Abi ʿUmar narrated (his text); Marwān ibn Muʿāwiyah al-Fazārī narrated; Ḥumayd narrated; Thābit narrated to me; from Anas; that **'The Prophet saw an old man walking with his two sons supporting him. He asked: "What is the matter with this man?" They said: "He pledged to go walking". He said: "God is in no need of this man torturing himself". He ordered the man to ride'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، أَخْبَرَنَا يَزِيدُ بْنُ زُرَيْعٍ، عَنْ حُمَيْدٍ، عَنْ ثَابِتٍ، عَنْ أَنَسٍ، ح. وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ (وَاللَّفْظُ لَهُ)، حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيُّ، حَدَّثَنَا حُمَيْدٌ، حَدَّثَنِي ثَابِتٌ، عَنْ أَنَسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَأَى شَيْخًا يُهَادَى بَيْنَ ابْنَيْهِ. فَقَالَ: «مَا بَالُ هَذَا»؟ قَالُوا: نَذَرَ أَنْ يَمْشِيَ. قَالَ: «إِنَّ اللهَ عَنْ تَعْذِيبِ هَذَا نَفْسَهُ لَغَنِيٌّ». وَأَمَرَهُ أَنْ يَرْكَبَ.

[3716–10]. (Dar al-Salam 4030–4031) Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated:[ii] they said: Ismāʿīl (who is Ibn Jaʿfar) narrated; from ʿAmr (who is Ibn Abi ʿAmr); from ʿAbd al-Raḥmān al-Aʿraj; from Abu Hurayrah; that **'The Prophet (peace be upon him) caught up with an old man walking between his two sons, leaning on them. The Prophet asked: "What is the matter with**

this one?" His sons said: "Messenger of God, he is fulfilling a pledge". The Prophet said: "Ride, old man. God is in no need of you and your pledge".' (This is the text from Qutaybah and Ibn Ḥujr.)

وَحَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنْ عَمْرٍو (وَهُوَ ابْنُ أَبِي عَمْرٍو)، عَنْ عَبْدِ الرَّحْمَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَدْرَكَ شَيْخًا يَمْشِي بَيْنَ ابْنَيْهِ، يَتَوَكَّأُ عَلَيْهِمَا. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَا شَأْنُ هَذَا»؟ قَالَ ابْنَاهُ: يَا رَسُولَ اللهِ كَانَ عَلَيْهِ نَذْرٌ. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «ارْكَبْ أَيُّهَا الشَّيْخُ، فَإِنَّ اللهَ غَنِيٌّ عَنْكَ وَعَنْ نَذْرِكَ». (وَاللَّفْظُ لِقُتَيْبَةَ وَابْنِ حُجْرٍ).

Qutaybah ibn Saʿīd narrated: ʿAbd al-ʿAzīz (meaning al-Darāwardī) narrated; from ʿAmr ibn Abi ʿAmr; with the same chain of transmission: **the same text.**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا عَبْدُ الْعَزِيزِ (يَعْنِي الدَّرَاوَرْدِيَّ)، عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3717–11]. (Dar al-Salam 4032) Zakariyyā' ibn Yaḥyā ibn Ṣāliḥ al-Miṣrī narrated:[iii] al-Mufaḍḍal (meaning Ibn Faḍālah) narrated; ʿAbdullāh ibn ʿAyyāsh narrated to me; from Yazīd ibn Abi Ḥabīb; from Abu al-Khayr; from ʿUqbah ibn ʿĀmir; that he said: **'My sister pledged to walk barefoot to the Sacred Mosque. She asked me to put the matter to God's Messenger (peace be upon him) and I asked him. He said: "Let her walk and ride".'**

وَحَدَّثَنَا زَكَرِيَّاءُ بْنُ يَحْيَى بْنِ صَالِحٍ الْمِصْرِيُّ، حَدَّثَنَا الْمُفَضَّلُ (يَعْنِي ابْنَ فَضَالَةَ)، حَدَّثَنِي عَبْدُ اللهِ بْنُ عَيَّاشٍ، عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ أَبِي الْخَيْرِ، عَنْ عُقْبَةَ بْنِ عَامِرٍ، أَنَّهُ قَالَ: نَذَرَتْ أُخْتِي أَنْ تَمْشِيَ إِلَى بَيْتِ اللهِ حَافِيَةً. فَأَمَرَتْنِي أَنْ أَسْتَفْتِيَ لَهَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَاسْتَفْتَيْتُهُ، فَقَالَ: «لِتَمْشِ وَلْتَرْكَبْ».

[3718 –12]. (Dar al-Salam 4033) Muhammad ibn Rāfiʿ narrated to me: ʿAbd al-Razzāq narrated; Ibn Jurayj reported; Saʿīd ibn Abi Ayyūb reported; that Yazīd ibn Abi Ḥabīb reported to him; that Abu al-Khayr narrated to him; from ʿUqbah ibn ʿĀmir al-Juhanī; that he said: **‘My sister pledged…’ he added the same as al-Mufaḍḍal’s narration, but did not mention ‘barefoot’. He added that Abu al-Khayr was always with ʿUqbah.**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنَا سَعِيدُ بْنُ أَبِي أَيُّوبَ، أَنَّ يَزِيدَ بْنَ أَبِي حَبِيبٍ، أَخْبَرَهُ أَنَّ أَبَا الْخَيْرِ حَدَّثَهُ، عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ، أَنَّهُ قَالَ: نَذَرَتْ أُخْتِي. فَذَكَرَ بِمِثْلِ حَدِيثِ مُفَضَّلٍ وَلَمْ يَذْكُرْ فِي الْحَدِيثِ حَافِيَةً. وَزَادَ وَكَانَ أَبُو الْخَيْرِ لاَ يُفَارِقُ عُقْبَةَ.

Muhammad ibn Ḥātim and Ibn Abi Khalaf narrated: both said: Rawḥ ibn ʿUbādah narrated; Ibn Jurayj narrated; Yaḥyā ibn Ayyūb reported to me; that Yazīd ibn Abi Ḥabīb reported to him; with this chain of transmission: **the same text as ʿAbd al-Razzāq’s narration.**

وَحَدَّثَنِيهِ مُحَمَّدُ بْنُ حَاتِمٍ، وَابْنُ أَبِي خَلَفٍ، قَالا: حَدَّثَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي يَحْيَى بْنُ أَيُّوبَ، أَنَّ يَزِيدَ بْنَ أَبِي حَبِيبٍ، أَخْبَرَهُ بِهَذَا الإِسْنَادِ: مِثْلَ حَدِيثِ عَبْدِ

الرَّزَّاقِ.

Text Explanation

The first hadith, No. 3715 mentions the case of the old man who pledged to offer the hajj walking. The Prophet commented that God is in no need of people torturing themselves and he ordered the old man to ride. Hadith No. 3717 mentions the case of ʿUqbah's sister and the question he put to the Prophet. The Prophet ordered her to ride and walk. The first case is understood to relate to a person who is unable to walk in fulfilment of his pledge. He may ride, but he atones by slaughtering a sheep. The other case of ʿUqbah's sister is given the verdict of riding at times and walking at other times. It means that she should walk when she could and ride when she found walking too hard. She was to give a sacrifice. What we have mentioned of the need to sacrifice in both cases is the more correct of two views mentioned by al-Shāfiʿī. This view is shared by a number of scholars. The other view is that a sacrifice is recommended, not obligatory.

As for walking barefoot, this is not obligatory. The one who pledges to walk barefoot may in fact wear shoes. The case of ʿUqbah's sister is mentioned in Abu Dāwūd's *Sunan* anthology, where it is clear that she was allowed to ride because she found walking too hard. ʿUqbah reports: 'My sister pledged to offer the pilgrimage walking, and she cannot endure that. God's Messenger said: "God is in no need of your sister's walk. Tell her to ride and to sacrifice a camel".'

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i. Related by al-Bukhari, 1865 and in a shorter version, 6701; Abu Dāwūd, 3301; al-Tirmidhī, 1537; al-Nasā'ī, 3861 and 3862.

ii. Related by Ibn Mājah, 2135.
iii. Related by al-Bukhari, 1866; Abu Dāwūd, 3299; al-Nasā'ī, 3823.

CHAPTER 5

INDEMNITY FOR AN UNFULFILLED PLEDGE

[3719–13]. (Dar al-Salam 4034) Ḥārūn ibn Saʿīd al-Aylī, Yūnus ibn ʿAbd al-Aʿlā and Ahmad ibn ʿĪsā narrated to me:[i] Ibn Wahb (Yūnus said: 'reported' and the other two said: 'narrated'); ʿAmr ibn al-Ḥārith reported to me; from Kaʿb ibn ʿAlqamah; from ʿAbd al-Raḥmān ibn Shumāsah; from Abu al-Khayr; from ʿUqbah ibn ʿĀmir; from God's Messenger (Peace be upon him). He said: **'The indemnity for an unfulfilled pledge is the same as the indemnity for a broken oath.'**

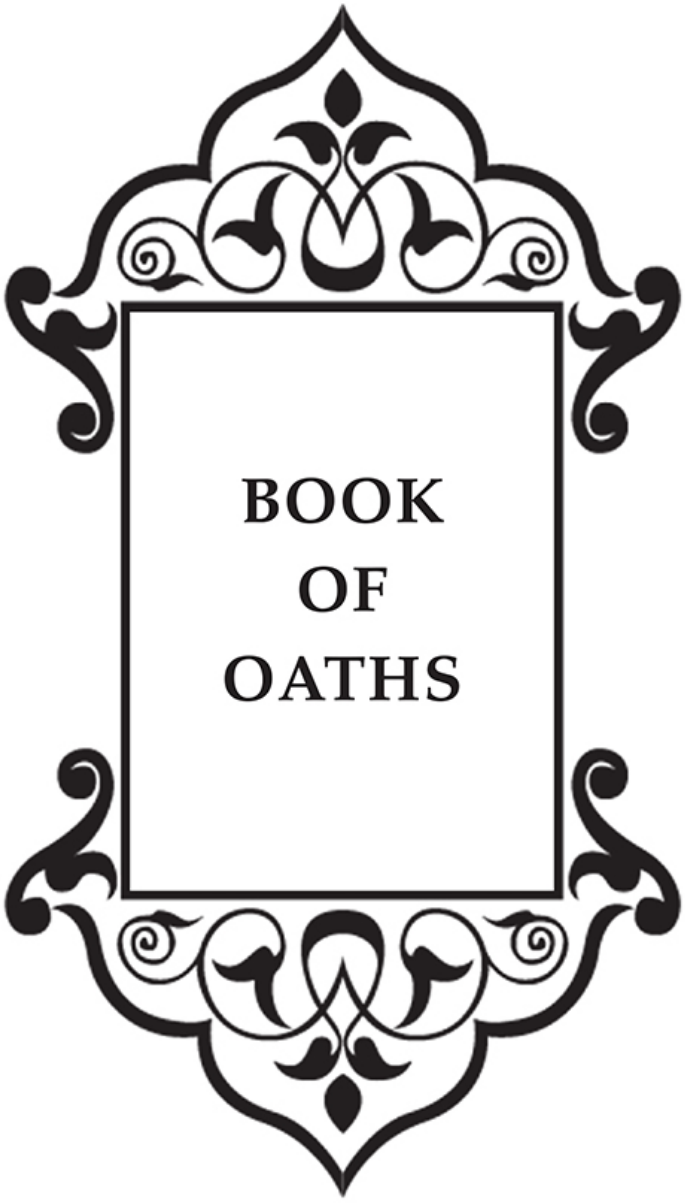
وَحَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، وَيُونُسُ بْنُ عَبْدِ الأَعْلَى، وَأَحْمَدُ بْنُ عِيسَى. (قَالَ يُونُسُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) ابْنُ وَهْبٍ، أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ، عَنْ كَعْبِ بْنِ عَلْقَمَةَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ شُمَاسَةَ، عَنْ أَبِي الْخَيْرِ، عَنْ عُقْبَةَ بْنِ عَامِرٍ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «كَفَّارَةُ النَّذْرِ كَفَّارَةُ الْيَمِينِ».

Text Explanation

Scholars differ concerning what is meant by this hadith. Most of our scholars say that it refers to an unintended pledge, such as that of a person who wants to refrain from speaking to a particular person saying: 'If I ever speak to him, I owe one hajj to God'. He then speaks to that person.

Scholars say that he has a choice: either to fulfil the pledge as he stated, or fulfil the indemnity for a broken oath. This is the correct view of our Shāfiʿī School. Mālik and many scholars, or perhaps the majority, apply this to all pledges. In other words, it applies to everyone who says: ‘I owe such-and-such…’. Ahmad and some of our scholars apply it only to a pledge to do what is forbidden, such as a person pledging to drink alcohol. A number of Hadith scholars who are also versed in Fiqh apply it to all types of pledge. They say that anyone who states a pledge has the choice to either fulfil his pledge or give the indemnity for a broken oath, but God knows best.

i. Related by Abu Dāwūd, 3323 and 3324; al-Tirmidhī, 1528.


BOOK
OF
OATHS

CHAPTER 1

THE PROHIBITION OF AN OATH BY SOME OTHER THAN GOD

[3720–1]. (Dar al-Salam 4035) Abu al-Ṭāhir Ahmad ibn ʿAmr ibn Sarḥ narrated to me:[i] Ibn Wahb narrated; from Yūnus [H]. Also, Ḥarmalah ibn Yaḥyā narrated to me; Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; from Sālim ibn ʿAbdullāh; from his father. He said: **'I heard ʿUmar ibn al-Khaṭṭāb say: "God's Messenger (peace be upon him) said: 'God, Mighty and Exalted, forbids you to swear by your fathers'." ʿUmar said: "By God, I never said such an oath since I heard God's Messenger (peace be upon him) forbidding it, either deliberately or in quotation".'**

وَحَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ، حَدَّثَنَا ابْنُ وَهْبٍ، عَنْ يُونُسَ، ح. وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنْ سَالِمِ بْنِ عَبْدِ اللهِ، عَنْ أَبِيهِ، قَالَ: سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ اللهَ عَزَّ وَجَلَّ يَنْهَاكُمْ أَنْ تَحْلِفُوا بِآبَائِكُمْ». قَالَ عُمَرُ: فَوَاللهِ مَا حَلَفْتُ بِهَا مُنْذُ سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْهَا ذَاكِرًا وَلا آثِرًا.

[3721–2]. (Dar al-Salam 4036) ʿAbd al-Malik ibn Shuʿayb ibn al-Layth narrated to me: my father narrated to me; from my grandfather; ʿUqayl ibn Khālid narrated to me [H]. Also, Isḥāq ibn

Ibrāhīm and ʿAbd ibn Ḥumayd narrated; both said: ʿAbd al-Razzāq narrated; Maʿmar reported; both from al-Zuhrī; with the same chain of transmission: **the same text, except that in ʿUqayl's narration: 'I never said such an oath, nor uttered it, since I heard God's Messenger (peace be upon him) forbidding it', but did not say: 'either deliberately or in quotation'.**

وَحَدَّثَنِي عَبْدُ الْـمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ، حَدَّثَنِي أَبِي، عَنْ جَدِّي، حَدَّثَنِي عُقَيْلُ بْنُ خَالِدٍ ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَبْدُ بْنُ حُمَيْدٍ، قَالا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كِلاَهُمَا عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. غَيْرَ أَنَّ فِي حَدِيثِ عُقَيْلٍ: مَا حَلَفْتُ بِهَا، مُنْذُ سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَنْهَى عَنْهَا، وَلا تَكَلَّمْتُ بِهَا. وَلَمْ يَقُلْ: ذَاكِرًا وَلا آثِرًا.

[3722–000]. (Dar al-Salam 4037) Abu Bakr ibn Abi Shaybah, ʿAmr al-Nāqid and Zuhayr ibn Ḥarb narrated:[ii] they said: Sufyān ibn ʿUyaynah narrated; from al-Zuhrī; from Sālim; from his father. He said: **'The Prophet (peace be upon him) heard ʿUmar swearing by his father…' adding the same as the hadith narrated by Yūnus and Maʿmar.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَعَمْرٌو النَّاقِدُ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ قَالَ: سَمِعَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عُمَرَ وَهُوَ يَحْلِفُ بِأَبِيهِ. بِمِثْلِ رِوَايَةِ يُونُسَ وَمَعْمَرٍ.

[3723–3]. (Dar al-Salam 4038) Qutaybah ibn Saʿīd narrated:[iii] Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated (his text); al-Layth reported; from Nāfiʿ; from ʿAbdullāh; from God's

Messenger (peace be upon him) that **‘He caught up with ʿUmar ibn al-Khaṭṭāb riding with a number of people, and ʿUmar was swearing by his father. God’s Messenger (peace be upon him) called out to them saying: “God, Mighty and Exalted, forbids you to swear by your parents. Whoever says an oath must either swear by God or remain silent”.’**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ (وَاللَّفْظُ لَهُ)، أَخْبَرَنَا اللَّيْثُ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللهِ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ أَدْرَكَ عُمَرَ بْنَ الْخَطَّابِ فِي رَكْبٍ، وَعُمَرُ يَحْلِفُ بِأَبِيهِ. فَنَادَاهُمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَلا إِنَّ اللهَ عَزَّ وَجَلَّ يَنْهَاكُمْ أَنْ تَحْلِفُوا بِآبَائِكُمْ. فَمَنْ كَانَ حَالِفًا، فَلْيَحْلِفْ بِاللهِ أَوْ لِيَصْمُتْ».

[3724–4]. (Dar al-Salam 4039) Muhammad ibn ʿAbdullāh ibn Numayr narrated: my father narrated [H]. Also, Muhammad ibn al-Muthannā narrated; Yaḥyā (who is al-Qaṭṭān) narrated; from ʿUbaydullāh [H]. And, Bishr ibn Hilāl narrated to me; ʿAbd al-Wārith narrated; Ayyūb narrated [H]. Further, Abu Kurayb narrated; Abu Usāmah narrated; from al-Walīd ibn Kathīr [H]. Also, Ibn Abi ʿUmar narrated; Sufyān narrated; from Ismāʿīl ibn Umayyah [H]. And, Ibn Rāfiʿ narrated; Ibn Abi Fudayk narrated; al-Ḍaḥḥāk and Ibn Abi Dhi’b narrated [H]. Furthermore, Isḥāq ibn Ibrāhīm and Ibn Rāfiʿ narrated from ʿAbd al-Razzāq; from Ibn Jurayj; ʿAbd al-Karīm reported to me; all of these from Nāfiʿ; from Ibn ʿUmar: **the same text, attributing it to the Prophet (peace be upon him).**

وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا أَبِي ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا يَحْيَى (وَهُوَ الْقَطَّانُ)، عَنْ عُبَيْدِ اللهِ ح. وَحَدَّثَنِي بِشْرُ بْنُ هِلاَلٍ، حَدَّثَنَا عَبْدُ الْوَارِثِ، حَدَّثَنَا أَيُّوبُ ح. وَحَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا أَبُو أُسَامَةَ، عَنِ الْوَلِيدِ بْنِ كَثِيرٍ ح. وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ، ح. وَحَدَّثَنَا ابْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، أَخْبَرَنَا الضَّحَّاكُ، وَابْنُ أَبِي ذِئْبٍ ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ وَابْنُ رَافِعٍ، عَنْ عَبْدِ الرَّزَّاقِ، عَنِ ابْنِ جُرَيْجٍ، أَخْبَرَنِي عَبْدُ الْكَرِيمِ. كُلُّ هَؤُلاَءِ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ: بِمِثْلِ هَذِهِ الْقِصَّةِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3725–000]. (Dar al-Salam 4040) Yaḥyā ibn Yaḥyā, Yaḥyā ibn Ayyūb, Qutaybah and Ibn Ḥujr narrated:[iv] Ismāʿīl (who is Ibn Jaʿfar) (Yaḥyā ibn Yaḥyā said: ‘reported’ and the others said: ‘narrated’); from ʿAbdullāh ibn Dīnār; that he heard Ibn ʿUmar say: **‘God’s Messenger (peace be upon him) said: “Whoever wants to say an oath must not swear by anyone other than God’. The Quraysh used to swear by their fathers; so the Prophet said: ‘Do not swear by your fathers”.’**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَيَحْيَى بْنُ أَيُّوبَ، وَقُتَيْبَةُ، وَابْنُ حُجْرٍ. (قَالَ يَحْيَى بْنُ يَحْيَى أَخْبَرَنَا وَقَالَ الآخَرُونَ حَدَّثَنَا) إِسْمَاعِيلُ (وَهُوَ ابْنُ جَعْفَرٍ)، عَنْ عَبْدِ اللهِ بْنِ دِينَارٍ، أَنَّهُ سَمِعَ ابْنَ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَ حَالِفًا فَلا يَحْلِفْ إِلاَّ بِاللهِ». وَكَانَتْ قُرَيْشٌ تَحْلِفُ بِآبَائِهَا، فَقَالَ: «لا تَحْلِفُوا بِآبَائِكُمْ».

Text Explanation

Scholars say that the reason for the prohibition of swearing by anyone other than God is that, in essence, an oath implies acknowledgement of the

greatness of what one is swearing by. Greatness itself applies to God Almighty; no one is comparable to Him. Ibn ʿAbbās is quoted: 'For me, to swear by God one hundred times and break my oath is better than to swear by someone else and honour my oath'. It may be said that the hadith is contrary to the Prophet himself saying: 'He will be successful, by his father, if he honours his word'. This formula used by the Prophet is an usual expression, not intended as an oath. It may also be pointed out that God Himself swears by His creation, such as 'By Mount Sinai' and 'By the Star'. In answer we say that God may state an oath by whatever He wishes of His creation, to alert to the status of that creation.

In hadith No. 3720, ʿUmar says that he never said such an oath 'deliberately or in quotation'. Deliberately means with his own intention, and by in quotation means using words said by someone else.

This hadith in its various versions shows that it is permissible to state an oath by God Almighty and by His attributes. This is unanimously agreed upon. The hadith also prohibits swearing by anything other than God's names and attributes. According to our scholars, such swearing is reprehensible, not strictly forbidden.

i. Related by al-Bukhari, 6647; Abu Dāwūd, 3250; al-Nasā'ī, 3776 and 3777; Ibn Mājah, 2094.
ii. Related by al-Tirmidhī, 1533; al-Nasā'ī, 3775.
iii. Related by al-Bukhari, 6108 and 6646.
iv. Related by al-Bukhari, 3836; al-Nasā'ī, 3773.

CHAPTER 2

IF ONE SWEARS BY IDOLS…

[3726–5]. (Dar al-Salam 4041) Abu al-Ṭāhir narrated to me:[i] Ibn Wahb narrated; from Yūnus [H]. Ḥarmalah ibn Yaḥyā narrated to me; Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; Ḥumayd ibn ʿAbd al-Raḥmān ibn ʿAwf reported to me; that Abu Hurayrah said: **‘God’s Messenger (peace be upon him) said: “Whoever of you says an oath and includes in his oath ‘By al-Lat’, should say: ‘There is no deity other than God’; and whoever says to his friend: ‘Let us bet’, should give some charity”.’**

حَدَّثَنِي أَبُو الطَّاهِرِ، حَدَّثَنَا ابْنُ وَهْبٍ، عَنْ يُونُسَ، ح. وَحَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، أَخْبَرَنِي حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، أَنَّ أَبَا هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ حَلَفَ مِنْكُمْ، فَقَالَ فِي حَلِفِهِ بِاللاَّتِ، فَلْيَقُلْ: لا إِلَهَ إِلاَّ اللهُ. وَمَنْ قَالَ لِصَاحِبِهِ تَعَالَ أُقَامِرْكَ، فَلْيَتَصَدَّقْ».

[3727–000]. (Dar al-Salam 4042) Suwayd ibn Saʿīd narrated to me: al-Walīd ibn Muslim narrated; from al-Awzāʿī [H]. Also, Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated; both said: ʿAbd al-Razzāq narrated; Maʿmar reported; both from al-Zuhrī; with the same chain of transmission: **Maʿmar’s narration is the same as Yūnus’s, except that he said: ‘should give something as charity’, and in**

al-Awzāʿī's narration: 'Whoever swears by al-Lat and al-ʿUzzā'.

Abu al-Ḥusayn Muslim said: **'This sentence, meaning "Whoever says to his friend: Let us bet, should give some charity", is related by no one other than al-Zuhrī. In fact, al-Zuhrī narrates around ninety hadiths from the Prophet (peace be upon him) in which no one else narrates with sound chains of transmission'.**

وَحَدَّثَنِي سُوَيْدُ بْنُ سَعِيدٍ، حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ، عَنِ الأَوْزَاعِيِّ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ وَعَبْدُ بْنُ حُمَيْدٍ قَالا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كِلاَهُمَا عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ. وَحَدِيثُ مَعْمَرٍ مِثْلُ حَدِيثِ يُونُسَ، غَيْرَ أَنَّهُ قَالَ: «فَلْيَتَصَدَّقْ بِشَيْءٍ». وَفِي حَدِيثِ الأَوْزَاعِيِّ: «مَنْ حَلَفَ بِاللاَّتِ وَالْعُزَّى».

قَالَ أَبُو الْحُسَيْنِ مُسْلِمٌ هَذَا الْحَرْفُ – يَعْنِي قَوْلَهُ: «تَعَالَ أُقَامِرْكَ، فَلْيَتَصَدَّقْ» – لا يَرْوِيهِ أَحَدٌ غَيْرُ الزُّهْرِيِّ. قَالَ: وَلِلزُّهْرِيِّ نَحْوٌ مِنْ تِسْعِينَ حَدِيثًا يَرْوِيهِ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لا يُشَارِكُهُ فِيهِ أَحَدٌ بِأَسَانِيدَ جِيَادٍ.

[3728–6]. (Dar al-Salam 4043) Abu Bakr ibn Abi Shaybah narrated:[ii] ʿAbd al-Aʿlā narrated; from Hishām; from al-Ḥasan; from ʿAbd al-Raḥmān ibn Samurah. He said: **'God's Messenger (peace be upon him) said: "Do not swear by idols or by your fathers".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ الأَعْلَى، عَنْ هِشَامٍ، عَنِ الْحَسَنِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تَحْلِفُوا بِالطَّوَاغِي وَلا بِآبَائِكُمْ».

Text Explanation

The Prophet gives clear instructions that if a person swears by al-Lat and al-ʿUzzā, the main idols the Arabs worshipped in pre-Islamic days, that person should follow this by stating that there is no deity other than God. This is because to swear by such idols is to give them an element of greatness. Our scholars say that if a person swears by al-Lat, al-ʿUzzā or other idols, or if one says: "I am a Christian or a Jew or a non-Muslim, or I disown the Prophet", or anything similar, his oath is invalid and has no effect. He must, however, seek God's forgiveness and say: 'There is no deity other than God'. He does not have to do anything by way of indemnity, whether he says what the Prophet orders or not. This is the view of al-Shāfiʿī, Mālik and the majority of scholars. Abu Ḥanīfah said that an indemnity is due for any of the above, except if one says: 'I am in deviation', or 'I disown the Prophet' or 'by Judaism'. Abu Ḥanīfah argues that God imposes an indemnity on a person who says that his wife is forbidden to him because what he says is 'iniquitous and false'. (58: 2) Swearing by such things is also iniquitous and false. Our scholars make their argument on the basis of the apparent meaning of this hadith in which the Prophet only orders such a speaker to say, 'there is no deity other than God', mentioning no indemnity. Moreover, indemnity is not required unless it is stated in a religious text. The analogy Ḥanafī scholars draw with making one's wife unlawful is made invalid by the cases they excepted, but God knows best.

Hadith No. 3726 quotes the Prophet: 'Whoever says to his friend: "Let us bet", should give some charity'. Scholars said that the charity is ordered so as to wipe away the offence this person has committed by saying what he said. Al-Khaṭṭābī said: 'It means that he should give in charity the same amount he wanted to bet with'. The correct view which is shared by eminent scholars is that it is not related to that amount. The apparent meaning of the hadith is to give whatever is available as charity. This is confirmed by Maʿmar's narration, also related by Muslim, saying: 'should give some charity'.

Qadi ʿIyāḍ said: This hadith provides evidence in support of the view of the majority of scholars that if an intention of committing a sin is confirmed in one's mind, it becomes a recorded sin. This is contrary to a fleeting thought that forms no resolve. This was discussed and clarified in the early part of this commentary.

In hadith No. 3728, the Prophet orders: 'Do not swear by idols or by your fathers'. The Prophet refers to idols using the word *ṭawāghī* which literally means 'tyrants'. The Arabs used to refer to their idols as tyrants, even as far as a specific tribal idol being referred to as the tyrant of that tribe. The root of the Arabic word signifies 'exceeding proper limits', and the idol is called *ṭāghiyah*, or tyrant, because the idolaters went beyond proper limits by venerating it.

i. Related by al-Bukhari, 4860, 6107, 6301 and 6650; Abu Dāwūd, 3247; al-Tirmidhī, 1545; al-Nasā'ī, 3784; Ibn Mājah in a shorter version, 2096.

ii. Related by al-Bukhari, 6623 and 6718; Abu Dāwūd; 3276; al-Nasā'ī, 3789; Ibn Mājah, 2107.

CHAPTER 3

WHEN THE ALTERNATIVE TO AN OATH IS BETTER

[3729–7]. (Dar al-Salam 4044) Khalaf ibn Hishām, Qutaybah ibn Saʿīd and Yaḥyā ibn Ḥabīb al-Ḥārithī narrated (Khalaf's text):[i] they said: Ḥammād ibn Zayd narrated; from Ghaylān ibn Jarīr; from Abu Burdah; from Abu Mūsā al-Ashʿarī. He said: **'I went to the Prophet (peace be upon him) with a group of Ashʿarī people, requesting him mounts. He said: "By God, I shall not give you mounts; and I do not have mounts to give you". He was then brought some camels. He ordered that we be given three camels with white humps. When we marched, we said (or some of us said to the others): God shall not bless us. We went to God's Messenger requesting mounts and he swore that he would not give us them, then he gave us. They went to him and spoke about this. He said: "It is not I who has given you your mounts; it is God. As for me, by God, if I say an oath, then I see that a different option is better, I shall, God willing, atone for my oath and do the better alternative".'**

حَدَّثَنَا خَلَفُ بْنُ هِشَامٍ، وَقُتَيْبَةُ بْنُ سَعِيدٍ، وَيَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ (وَاللَّفْظُ لِخَلَفٍ) قَالُوا: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ غَيْلاَنَ بْنِ جَرِيرٍ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى الأَشْعَرِيِّ قَالَ: أَتَيْتُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي رَهْطٍ مِنَ الأَشْعَرِيِّينَ نَسْتَحْمِلُهُ. فَقَالَ: «وَاللهِ لاَ أَحْمِلُكُمْ.

وَمَا عِنْدِي مَا أَحْمِلُكُمْ عَلَيْهِ». قَالَ: فَلَبِثْنَا مَا شَاءَ اللهُ، ثُمَّ أُتِيَ بِإِبِلٍ، فَأَمَرَ لَنَا بِثَلاَثِ ذَوْدٍ غُرِّ الذُّرَى. فَلَمَّا انْطَلَقْنَا قُلْنَا – أَوْ قَالَ بَعْضُنَا لِبَعْضٍ: لا يُبَارِكُ اللهُ لَنَا. أَتَيْنَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَسْتَحْمِلُهُ، فَحَلَفَ أَنْ لاَ يَحْمِلَنَا، ثُمَّ حَمَلَنَا. فَأَتَوْهُ فَأَخْبَرُوهُ، فَقَالَ: «مَا أَنَا حَمَلْتُكُمْ، وَلَكِنَّ اللهَ حَمَلَكُمْ. وَإِنِّي وَاللهِ إِنْ شَاءَ اللهُ لا أَحْلِفُ عَلَى يَمِينٍ، ثُمَّ أَرَى خَيْرًا مِنْهَا إِلاَّ كَفَّرْتُ عَنْ يَمِينِي، وَأَتَيْتُ الَّذِي هُوَ خَيْرٌ.

[3730–8]. (Dar al-Salam 4045) ʿAbdullāh ibn Barrād al-Ashʿarī and Muhammad ibn al-ʿAlā’ al-Hamdānī narrated (in similar terms):[ii] both said: Abu Usāmah ibn Burayd narrated; from Abu Burdah; from Abu Mūsā. He said: **‘My people sent me to God’s Messenger (peace be upon him) to request him [to give] them mounts, as they wanted to join him with the “army of hardship” (which was the Tabuk Expedition). I said: “Prophet of God, my people have sent me to you to request you for mounts”. He said: “By God, I shall not give you any mounts”. I met him when he was angry without realizing this. I went back feeling sad because of God’s Messenger’s refusal and fearing that God’s Messenger (peace be upon him) might have been upset by me. I went back to my people and told them what God’s Messenger said. It was only a short while later when I heard Bilāl calling me by name, ʿAbdullāh ibn Qays! I answered him, and he said: “Come, God’s Messenger wants you”. When I went to God’s Messenger (peace be upon him), he said: “Take these two tied camels, and these two tied ones, and these two tied ones”, (pointing to six camels which he then bought from Saʿd) and go to your people and say: “God (or he**

might have said: God's Messenger) gives you these mounts; ride them".'

Abu Mūsā said: **'I took these camels to my people and said to them: God's Messenger (peace be upon him) gives you these mounts. However, by God I shall not leave you until some of you come with me to see those who heard what God's Messenger (peace be upon him) said to me when I put your request to him and how he refused at first, then how he gave me the camels after that. I do not wish you to think that I might have said something he did not say'. They said: 'By God, we believe you, but we will do what you like. Abu Mūsā went with a group of them and saw the people who heard what God's Messenger said and how he refused at first and then he gave them. They told them exactly the same thing Abu Mūsā had said.'**

حَدَّثَنَا عَبْدُ اللهِ بْنُ بَرَّادٍ الأَشْعَرِيُّ، وَمُحَمَّدُ بْنُ الْعَلاَءِ الْهَمْدَانِيُّ، (وَتَقَارَبَا فِي اللَّفْظِ) قَالا: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ بُرَيْدٍ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى قَالَ: أَرْسَلَنِي أَصْحَابِي إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَسْأَلُهُ لَهُمُ الْحُمْلاَنَ، إِذْ هُمْ مَعَهُ فِي جَيْشِ الْعُسْرَةِ – وَهِيَ غَزْوَةُ تَبُوكَ. فَقُلْتُ يَا نَبِيَّ اللهِ إِنَّ أَصْحَابِي أَرْسَلُونِي إِلَيْكَ لِتَحْمِلَهُمْ. فَقَالَ: «وَاللهِ لاَ أَحْمِلُكُمْ عَلَى شَيْءٍ». وَوَافَقْتُهُ وَهُوَ غَضْبَانُ وَلاَ أَشْعُرُ. فَرَجَعْتُ حَزِينًا مِنْ مَنْعِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَمِنْ مَخَافَةِ أَنْ يَكُونَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَدْ وَجَدَ فِي نَفْسِهِ عَلَيَّ. فَرَجَعْتُ إِلَى أَصْحَابِي فَأَخْبَرْتُهُمُ الَّذِي قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَلَمْ أَلْبَثْ إِلاَّ سُوَيْعَةً إِذْ سَمِعْتُ بِلاَلاً يُنَادِي: أَىْ عَبْدَ اللهِ بْنَ قَيْسٍ. فَأَجَبْتُهُ، فَقَالَ: أَجِبْ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَدْعُوكَ. فَلَمَّا أَتَيْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «خُذْ هَذَيْنِ الْقَرِينَيْنِ، وَهَذَيْنِ الْقَرِينَيْنِ، وَهَذَيْنِ الْقَرِينَيْنِ»، لِسِتَّةِ أَبْعِرَةٍ ابْتَاعَهُنَّ حِينَئِذٍ مِنْ سَعْدٍ،

«فَانْطَلِقْ بِهِنَّ إِلَى أَصْحَابِكَ فَقُلْ إِنَّ اللهَ – أَوْ قَالَ إِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ – يَحْمِلُكُمْ عَلَى هَؤُلاَءِ فَارْكَبُوهُنَّ». قَالَ أَبُو مُوسَى: فَانْطَلَقْتُ إِلَى أَصْحَابِي بِهِنَّ، فَقُلْتُ إِنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَحْمِلُكُمْ عَلَى هَؤُلاَءِ، وَلَكِنْ وَاللهِ لا أَدَعُكُمْ حَتَّى يَنْطَلِقَ مَعِي بَعْضُكُمْ إِلَى مَنْ سَمِعَ مَقَالَةَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حِينَ سَأَلْتُهُ لَكُمْ وَمَنْعَهُ فِي أَوَّلِ مَرَّةٍ، ثُمَّ إِعْطَاءَهُ إِيَّاىَ بَعْدَ ذَلِكَ، لا تَظُنُّوا أَنِّي حَدَّثْتُكُمْ شَيْئًا لَمْ يَقُلْهُ. فَقَالُوا لِي: وَاللهِ إِنَّكَ عِنْدَنَا لَمُصَدَّقٌ، وَلَنَفْعَلَنَّ مَا أَحْبَبْتَ. فَانْطَلَقَ أَبُو مُوسَى بِنَفَرٍ مِنْهُمْ حَتَّى أَتَوُا الَّذِينَ سَمِعُوا قَوْلَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَمَنْعَهُ إِيَّاهُمْ، ثُمَّ إِعْطَاءَهُمْ بَعْدُ، فَحَدَّثُوهُمْ بِمَا حَدَّثَهُمْ بِهِ أَبُو مُوسَى سَوَاءً.

[3731–9]. (Dar al-Salam 4046) Abu al-Rabīʿ al-ʿAtakī narrated to me:[iii] Ḥammād (meaning Ibn Zayd) narrated; from Ayyūb; from Abu Qilābah and from al-Qāsim ibn ʿĀṣim; from Zahdam al-Jarmī. Ayyūb said: I memorize al-Qāsim's narration better than Abu Qilābah's narration. He said: **'We were at Abu Mūsā's, and he called for the meal. It included chicken. A white man from the Taymullāh tribe, looking similar to non-Arabs, came in. [Abu Mūsā] invited him to join us, but he hesitated. [Abu Mūsā] said: "Come and join us; I saw God's Messenger (peace be upon him) eating it". The man said: "I saw these eating something and thought it was dirty. I swore I would never eat it". He said: "Come along and I shall tell you about this".**

I went with a group of the Ashʿarī people to God's Messenger, requesting him to give us mounts. He said: "By God, I shall not give you mounts; and I do not have mounts to give you". We stayed for as long as God willed. God's Messenger was then brought some gained camels, and he called

us back. He ordered that we be given five camels with white humps. When we left, some of us said: We caused God's Messenger to forget his oath; we shall be denied God's blessing. We went back to him and said: Messenger of God, we came and requested you for mounts and you swore you will give us no mounts, but then you did. Have you, Messenger of God, forgotten? He said: "As for me, by God, if I say an oath, then I see that a different option is better, I shall do the better alternative and atone for my oath. Go ahead; it is God, Mighty and Exalted, who has given you your mounts".'

حَدَّثَنِي أَبُو الرَّبِيعِ الْعَتَكِيُّ، حَدَّثَنَا حَمَّادٌ (يَعْنِي ابْنَ زَيْدٍ)، عَنْ أَيُّوبَ، عَنْ أَبِي قِلاَبَةَ وَعَنِ الْقَاسِمِ بْنِ عَاصِمٍ، عَنْ زَهْدَمٍ الْجَرْمِيِّ. قَالَ أَيُّوبُ: وَأَنَا لِحَدِيثِ الْقَاسِمِ أَحْفَظُ مِنِّي لِحَدِيثِ أَبِي قِلاَبَةَ. قَالَ: كُنَّا عِنْدَ أَبِي مُوسَى فَدَعَا بِمَائِدَتِهِ وَعَلَيْهَا لَحْمُ دَجَاجٍ. فَدَخَلَ رَجُلٌ مِنْ بَنِي تَيْمِ اللهِ أَحْمَرُ، شَبِيهٌ بِالْـمَوَالِي، فَقَالَ لَهُ: هَلُمَّ. فَتَلَكَّأَ. فَقَالَ هَلُمَّ، فَإِنِّي قَدْ رَأَيْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَأْكُلُ مِنْهُ. فَقَالَ الرَّجُلُ: إِنِّي رَأَيْتُهُ يَأْكُلُ شَيْئًا فَقَذِرْتُهُ، فَحَلَفْتُ أَنْ لاَ أَطْعَمَهُ. فَقَالَ هَلُمَّ أُحَدِّثْكَ عَنْ ذَلِكَ.

إِنِّي أَتَيْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي رَهْطٍ مِنَ الأَشْعَرِيِّينَ نَسْتَحْمِلُهُ، فَقَالَ: «وَاللهِ لا أَحْمِلُكُمْ، وَمَا عِنْدِي مَا أَحْمِلُكُمْ عَلَيْهِ». فَلَبِثْنَا مَا شَاءَ اللهُ، فَأُتِيَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِنَهْبِ إِبِلٍ، فَدَعَا بِنَا. فَأَمَرَ لَنَا بِخَمْسِ ذَوْدٍ غُرِّ الذُّرَى. قَالَ: فَلَمَّا انْطَلَقْنَا قَالَ بَعْضُنَا لِبَعْضٍ: أَغْفَلْنَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَمِينَهُ، لا يُبَارَكُ لَنَا. فَرَجَعْنَا إِلَيْهِ فَقُلْنَا: يَا رَسُولَ اللهِ، إِنَّا أَتَيْنَاكَ نَسْتَحْمِلُكَ، وَإِنَّكَ حَلَفْتَ أَنْ لاَ تَحْمِلَنَا ثُمَّ حَمَلْتَنَا. أَفَنَسِيتَ يَا رَسُولَ اللهِ؟ قَالَ: «إِنِّي وَاللهِ، إِنْ شَاءَ اللهُ، لا أَحْلِفُ عَلَى يَمِينٍ فَأَرَى غَيْرَهَا خَيْرًا مِنْهَا، إِلاَّ أَتَيْتُ الَّذِي هُوَ خَيْرٌ وَتَحَلَّلْتُهَا». فَانْطَلِقُوا، فَإِنَّمَا حَمَلَكُمُ اللهُ عَزَّ وَجَلَّ.

[3732–000]. (Dar al-Salam 4047) Ibn Abi ʿUmar narrated: ʿAbd al-Wahhāb al-Thaqafī narrated; from Ayyūb; from Abu Qilābah and al-Qāsim al-Tamīmī; from Zahdam al-Jarmī. He said: **‘There was a close and fraternal relationship between this clan of Jarm and the Ashʿarīs. We were once at Abu Mūsā al-Ashʿarī when food was served and it included chicken…’ he added a similar text.**

وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلاَبَةَ وَالْقَاسِمِ التَّمِيمِيِّ، عَنْ زَهْدَمٍ الْجَرْمِيِّ، قَالَ: كَانَ بَيْنَ هَذَا الْحَيِّ مِنْ جَرْمٍ وَبَيْنَ الأَشْعَرِيِّينَ وُدٌّ وَإِخَاءٌ. فَكُنَّا عِنْدَ أَبِي مُوسَى الأَشْعَرِيِّ، فَقُرِّبَ إِلَيْهِ طَعَامٌ فِيهِ لَحْمُ دَجَاجٍ. فَذَكَرَ نَحْوَهُ.

[3733–000]. (Dar al-Salam 4048) ʿAlī ibn Ḥujr al-Saʿdī, Isḥāq ibn Ibrāhīm and Ibn Numayr narrated to me: from Ismāʿīl ibn ʿUlayyah; from Ayyūb; from al-Qāsim al-Tamīmī; from Zahdam al-Jarmī [H]. Also, Ibn Abi ʿUmar narrated; Sufyān narrated; from Ayyūb; from Abu Qilābah; from Zahdam al-Jarmī [H]. And, Abu Bakr ibn Isḥāq narrated; ʿAffān ibn Muslim narrated; Wuhayb narrated; Ayyūb narrated; from Abu Qilābah and al-Qāsim; from Zahdam al-Jarmī. He said: **‘We were at Abu Mūsā’s…’ all of them narrated the hadith with the same meaning as Ḥammād ibn Zayd’s narration.**

وَحَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ نُمَيْرٍ، عَنْ إِسْمَاعِيلَ ابْنِ عُلَيَّةَ، عَنْ أَيُّوبَ، عَنِ الْقَاسِمِ التَّمِيمِيِّ، عَنْ زَهْدَمٍ الْجَرْمِيِّ، ح. وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلاَبَةَ، عَنْ زَهْدَمٍ الْجَرْمِيِّ، ح. وَحَدَّثَنِي أَبُو بَكْرِ بْنُ إِسْحَاقَ، حَدَّثَنَا عَفَّانُ بْنُ مُسْلِمٍ، حَدَّثَنَا وُهَيْبٌ، حَدَّثَنَا أَيُّوبُ، عَنْ أَبِي قِلاَبَةَ وَالْقَاسِمِ، عَنْ زَهْدَمٍ الْجَرْمِيِّ، قَالَ: كُنَّا عِنْدَ أَبِي مُوسَى. وَاقْتَصُّوا جَمِيعًا الْحَدِيثَ بِمَعْنَى حَدِيثِ حَمَّادِ بْنِ زَيْدٍ.

[3734–000]. (Dar al-Salam 4049) Shaybān ibn Farrūkh narrated: al-Ṣaʿiq (meaning Ibn Ḥazn) narrated; Maṭar al-Warrāq narrated; Zahdam al-Jarmī narrated. He said: **‘I entered at Abu Mūsā’s as he was eating chicken…’ he narrated the hadith in similar terms to their narration, but added in it that he [meaning the Prophet] said: ‘By God, I did not forget it’.**

وَحَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا الصَّعْقُ (يَعْنِي ابْنَ حَزْنٍ)، حَدَّثَنَا مَطَرٌ الْوَرَّاقُ، حَدَّثَنَا زَهْدَمٌ الْجَرْمِيُّ، قَالَ: دَخَلْتُ عَلَى أَبِي مُوسَى وَهُوَ يَأْكُلُ لَحْمَ دَجَاجٍ. وَسَاقَ الْحَدِيثَ بِنَحْوِ حَدِيثِهِمْ، وَزَادَ فِيهِ قَالَ: «إِنِّي وَاللهِ مَا نَسِيتُهَا».

[3735–10]. (Dar al-Salam 4050) Isḥāq ibn Ibrāhīm narrated: Jarīr reported; from Sulaymān al-Taymī; from Ḍurayb ibn Nuqayr al-Qaysī; from Zahdam; from Abu Mūsā al-Ashʿarī. He said: **‘We went to God’s Messenger (peace be upon him) requesting mounts. He said: “I have no mounts to give you. By God, I shall not give you mounts”. He then sent us three camels with white humps. We thought that we went to God’s Messenger requesting mounts, but he swore that he would not give us any. We went to him again and spoke to him. He said: “If I say an oath, then I see that a different option is better, I will certainly do the better alternative”.’**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا جَرِيرٌ، عَنْ سُلَيْمَانَ التَّيْمِيِّ، عَنْ ضُرَيْبِ بْنِ نُقَيْرٍ الْقَيْسِيِّ، عَنْ زَهْدَمٍ، عَنْ أَبِي مُوسَى الأَشْعَرِيِّ، قَالَ: أَتَيْنَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَسْتَحْمِلُهُ، فَقَالَ: «مَا عِنْدِي مَا أَحْمِلُكُمْ. وَاللهِ مَا أَحْمِلُكُمْ». ثُمَّ بَعَثَ إِلَيْنَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِثَلاَثَةِ ذَوْدٍ، بُقْعِ الذُّرَى، فَقُلْنَا: إِنَّا أَتَيْنَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَسْتَحْمِلُهُ،

فَحَلَفَ أَنْ لاَ يَحْمِلَنَا. فَأَتَيْنَاهُ فَأَخْبَرْنَاهُ، فَقَالَ: «إِنِّي لا أَحْلِفُ عَلَى يَمِينٍ أَرَى غَيْرَهَا خَيْرًا مِنْهَا إِلاَّ أَتَيْتُ الَّذِي هُوَ خَيْرٌ».

[3736–000]. (Dar al-Salam 4051) Muhammad ibn ʿAbd al-Aʿlā al-Taymī narrated: al-Muʿtamir narrated; from his father; Abu al-Salīl narrated; from Zahdam; narrating to him from Abu Mūsā. He said: **'We were on foot, and we went to God's Prophet requesting mounts…' adding a similar text to Jarīr's narration.**

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الأَعْلَى التَّيْمِيُّ، حَدَّثَنَا الْـمُعْتَمِرُ، عَنْ أَبِيهِ، حَدَّثَنَا أَبُو السَّلِيلِ، عَنْ زَهْدَمٍ، يُحَدِّثُهُ عَنْ أَبِي مُوسَى، قَالَ: كُنَّا مُشَاةً، فَأَتَيْنَا نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَسْتَحْمِلُهُ. بِنَحْوِ حَدِيثِ جَرِيرٍ.

[3737–11]. (Dar al-Salam 4052) Zuhayr ibn Ḥarb narrated to me: Marwān ibn Muʿāwiyah al-Fazārī narrated; Yazīd ibn Kaysān reported; from Abu Ḥāzim; from Abu Hurayrah. He said: **'A man stayed late at night with the Prophet (peace be upon him), then went back home. He found his children asleep. His wife brought him his supper, but he swore that he would not eat [feeling sorry] for his children. Then he reflected and ate. He went to the Prophet and told him what happened. God's Messenger (peace be upon him) said: "Whoever says an oath and then finds an alternative to be better should do what is better and atone for his oath".'**

حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيُّ، أَخْبَرَنَا يَزِيدُ بْنُ كَيْسَانَ، عَنْ أَبِي حَازِمٍ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: أَعْتَمَ رَجُلٌ عِنْدَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ثُمَّ رَجَعَ إِلَى

أَهْلِهِ، فَوَجَدَ الصِّبْيَةَ قَدْ نَامُوا. فَأَتَاهُ أَهْلُهُ بِطَعَامِهِ، فَحَلَفَ لاَ يَأْكُلُ مِنْ أَجْلِ صِبْيَتِهِ. ثُمَّ بَدَا لَهُ فَأَكَلَ. فَأَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا فَلْيَأْتِهَا، وَلْيُكَفِّرْ عَنْ يَمِينِهِ»

[3738–12]. (Dar al-Salam 4053) Abu al-Ṭāhir narrated to me:[iv] ʿAbdullāh ibn Wahb narrated; Mālik reported to me; from Suhayl ibn Abi Ṣāliḥ; from his father; from Abu Hurayrah; that **‘God’s Messenger (peace be upon him) said: “Whoever says an oath and then finds an alternative to be better should atone for his oath and do [what is better]”.’**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، حَدَّثَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي مَالِكٌ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا، فَلْيُكَفِّرْ عَنْ يَمِينِهِ وَلْيَفْعَلْ».

[3739–13]. (Dar al-Salam 4054) Zuhayr ibn Ḥarb narrated: Ibn Abi Uways narrated; ʿAbd al-ʿAzīz ibn al-Muṭṭalib narrated to me; from Suhayl ibn Abi Ṣāliḥ; from his father; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “Whoever says an oath and then finds an alternative to be better should do what is better and atone for his oath”.’**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا ابْنُ أَبِي أُوَيْسٍ، حَدَّثَنِي عَبْدُ الْعَزِيزِ بْنُ الْمُطَّلِبِ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا، فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ، وَلْيُكَفِّرْ عَنْ يَمِينِهِ».

[3740–14]. (Dar al-Salam 4055) al-Qāsim ibn Zakariyyā’ narrated to me: Khālid ibn Makhlad narrated; Sulaymān (meaning Ibn Bilāl) narrated to me; Suhayl narrated; with the same chain of transmission: the same meaning as Mālik’s narration: **‘should atone for his oath and do what is better’.**

وَحَدَّثَنِي الْقَاسِمُ بْنُ زَكَرِيَّاءَ، حَدَّثَنَا خَالِدُ بْنُ مَخْلَدٍ، حَدَّثَنِي سُلَيْمَانُ (يَعْنِي ابْنَ بِلاَلٍ)، حَدَّثَنِي سُهَيْلٌ، فِي هَذَا الإِسْنَادِ: بِمَعْنَى حَدِيثِ مَالِكٍ «فَلْيُكَفِّرْ يَمِينَهُ وَلْيَفْعَلِ الَّذِي هُوَ خَيْرٌ».

[3741–15]. (Dar al-Salam 4056) Qutaybah ibn Saʿīd narrated:[v] Jarīr narrated; from ʿAbd al-ʿAzīz (meaning Ibn Rufayʿ); from Tamīm ibn Ṭarafah. He said: **‘A beggar came to ʿAdiy ibn Ḥātim requesting help: the price of a servant, or for a portion of the price of a servant. ʿAdiy said: “I have nothing to give you except my body armour and my head protector. I shall write to my family to give these to you”. The man did not agree, and ʿAdiy was angry. He said: “By God, I shall not give you anything”. Then the man accepted. ʿAdiy said: “By God, I would not have broken my oath except for the fact that I heard God’s Messenger (peace be upon him) say: ‘Whoever says an oath and then realizes that an alternative is more righteous in God’s sight should do what is more righteous’.”’**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا جَرِيرٌ، عَنْ عَبْدِ الْعَزِيزِ (يَعْنِي ابْنَ رُفَيْعٍ)، عَنْ تَمِيمِ بْنِ طَرَفَةَ قَالَ: جَاءَ سَائِلٌ إِلَى عَدِيِّ بْنِ حَاتِمٍ، فَسَأَلَهُ نَفَقَةً فِي ثَمَنِ خَادِمٍ، أَوْ فِي بَعْضِ ثَمَنِ خَادِمٍ. فَقَالَ لَيْسَ عِنْدِي مَا أُعْطِيكَ إِلاَّ دِرْعِي وَمِغْفَرِي، فَأَكْتُبُ إِلَى أَهْلِي أَنْ يُعْطُوكَهَا. قَالَ: فَلَمْ يَرْضَ. فَغَضِبَ عَدِيٌّ فَقَالَ: أَمَا وَاللهِ لاَ أُعْطِيكَ شَيْئًا. ثُمَّ إِنَّ الرَّجُلَ رَضِيَ. فَقَالَ: أَمَا وَاللهِ لَوْلاَ أَنِّي

سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ حَلَفَ عَلَى يَمِينٍ ثُمَّ رَأَى أَتْقَى لِلهِ مِنْهَا فَلْيَأْتِ التَّقْوَى»، مَا حَنَّثْتُ يَمِينِي.

[3742–16]. (Dar al-Salam 4057) ʿUbaydullāh ibn Muʿādh narrated: my father narrated; Shuʿbah narrated; from ʿAbd al-ʿAzīz ibn Rufayʿ; from Tamīm ibn Ṭarafah; from ʿAdiy ibn Ḥātim. He said: **‘God’s Messenger (peace be upon him) said: “Whoever says an oath and then sees that an alternative is better should do what is better and abandon his oath”.’**

وَحَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنْ تَمِيمِ بْنِ طَرَفَةَ، عَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ حَلَفَ عَلَى يَمِينٍ فَرَأَى غَيْرَهَا خَيْرًا مِنْهَا، فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ، وَلْيَتْرُكْ يَمِينَهُ».

[3743–17]. (Dar al-Salam 4058–4059) Muhammad ibn ʿAbdullāh ibn Numayr and Muhammad ibn Ṭarīf al-Bajalī (Ibn Ṭarīf’s text) narrated to me: both said: Muhammad ibn Fuḍayl narrated; from al-Aʿmash; from ʿAbd al-ʿAzīz ibn Rufayʿ; from Tamīm al-Ṭā’ī; from ʿAdiy. He said: **‘Whoever of you says an oath and then finds an alternative to be better should atone for his oath and do that which is better’.**

حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، وَمُحَمَّدُ بْنُ طَرِيفٍ الْبَجَلِيُّ (وَاللَّفْظُ لِابْنِ طَرِيفٍ)، قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنِ الأَعْمَشِ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنْ تَمِيمٍ الطَّائِيِّ، عَنْ عَدِيٍّ، قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِذَا حَلَفَ أَحَدُكُمْ عَلَى الْيَمِينِ فَرَأَى خَيْرًا مِنْهَا، فَلْيُكَفِّرْ هَا، وَلْيَأْتِ الَّذِي هُوَ خَيْرٌ».

Muhammad ibn Ṭarīf narrated: Muhammad ibn Fuḍayl narrated; from al-Shaybānī; from ʿAbd al-ʿAzīz ibn Rufayʿ; from Tamīm al-Ṭā'ī; from ʿAdiy ibn Ḥātim; that **he heard the Prophet say this.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ طَرِيفٍ، حَدَّثَنَا مُحَمَّدُ بْنُ فُضَيْلٍ، عَنِ الشَّيْبَانِيِّ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنْ تَمِيمٍ الطَّائِيِّ، عَنْ عَدِيِّ بْنِ حَاتِمٍ، أَنَّهُ سَمِعَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ ذَلِكَ.

[3744–18]. (Dar al-Salam 4060) Muhammad ibn al-Muthannā and Ibn Bashshār narrated: both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Simāk ibn Ḥarb; from Tamīm ibn Ṭarafah. He said: **'I heard ʿAdiy ibn Ḥātim when a man came and asked him for one hundred dirhams. He said: "You ask me for one hundred dirhams [knowing that] I am Ibn Ḥātim? By God, I shall not give you". He then said: "[I would have kept my oath] had I not heard God's Messenger (peace be upon him) say: 'Whoever says an oath and then finds an alternative to be better should do what is better'."'**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ تَمِيمِ بْنِ طَرَفَةَ، قَالَ: سَمِعْتُ عَدِيَّ بْنَ حَاتِمٍ، وَأَتَاهُ رَجُلٌ يَسْأَلُهُ مِائَةَ دِرْهَمٍ. فَقَالَ: تَسْأَلُنِي مِائَةَ دِرْهَمٍ وَأَنَا ابْنُ حَاتِمٍ؟ وَاللهِ لا أُعْطِيكَ. ثُمَّ قَالَ: لَوْلاَ أَنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ حَلَفَ عَلَى يَمِينٍ ثُمَّ رَأَى خَيْرًا مِنْهَا فَلْيَأْتِ الَّذِي هُوَ خَيْرٌ».

[3745–000]. (Dar al-Salam 4061) Muhammad ibn Ḥātim narrated: Bahz narrated; Shuʿbah narrated; Simāk ibn Ḥarb narrated. He

said: I heard Tamīm ibn Ṭarafah say: **‘I heard ʿAdiy ibn Ḥatim as a man made a request of him…’ he added the same text, but added: ‘You shall have four hundred from my share’.**

حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا بَهْزٌ، حَدَّثَنَا شُعْبَةُ، حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ قَالَ: سَمِعْتُ تَمِيمَ بْنَ طَرَفَةَ قَالَ: سَمِعْتُ عَدِيَّ بْنَ حَاتِمٍ أَنَّ رَجُلاً سَأَلَهُ، فَذَكَرَ مِثْلَهُ، وَزَادَ: وَلَكَ أَرْبَعُمِائَةٍ فِي عَطَائِي.

[3746–19]. (Dar al-Salam 4062) Shaybān ibn Farrūkh narrated:[vi] Jarīr ibn Ḥāzim narrated; al-Ḥasan narrated; ʿAbd al-Raḥmān ibn Samurah narrated. He said: **‘God’s Messenger said to me: “ʿAbd al-Raḥmān ibn Samurah! Do not seek a position of authority; for if you are given it at your request, you will bear the responsibility for it; and if you are given it without seeking it, you will be helped. And if you say an oath then find that an alternative is better, atone for the oath and do what is better”.’**

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا جَرِيرُ بْنُ حَازِمٍ، حَدَّثَنَا الْحَسَنُ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ سَمُرَةَ قَالَ: قَالَ لِي رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «يَا عَبْدَ الرَّحْمَنِ بْنَ سَمُرَةَ، لاَ تَسْأَلِ الإِمَارَةَ. فَإِنَّكَ إِنْ أُعْطِيتَهَا عَنْ مَسْأَلَةٍ وُكِلْتَ إِلَيْهَا، وَإِنْ أُعْطِيتَهَا عَنْ غَيْرِ مَسْأَلَةٍ أُعِنْتَ عَلَيْهَا. وَإِذَا حَلَفْتَ عَلَى يَمِينٍ فَرَأَيْتَ غَيْرَهَا خَيْرًا مِنْهَا، فَكَفِّرْ عَنْ يَمِينِكَ وَائْتِ الَّذِي هُوَ خَيْرٌ».

Abu Ahmad al-Julūdī said: Abu al-ʿAbbās al-Māsarjasī narrated; Shaybān ibn Farrūkh narrated: **the same hadith.**

قَالَ أَبُو أَحْمَدَ الْجُلُودِيُّ: حَدَّثَنَا أَبُو الْعَبَّاسِ الْمَاسَرْجَسِيُّ، حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ: بِهَذَا الْحَدِيثِ.

[3747–000]. (Dar al-Salam 4063) ʿAlī ibn Ḥujr al-Saʿdī narrated to me: Hushaym narrated; from Yūnus, Manṣūr and Ḥumayd [H]. Also, Abu Kāmil al-Jaḥdarī narrated; Ḥammād ibn Zayd narrated; from Simāk ibn ʿAṭiyyah, Yūnus ibn ʿUbayd, Hishām ibn Ḥassān along with others [H]. And, ʿUbaydullāh ibn Muʿādh narrated; al-Muʿtamir narrated; from his father [H]. Further, ʿUqbah ibn Mukram al-ʿAmmī narrated; Saʿīd ibn ʿĀmir narrated; from Saʿīd; from Qatādah; all of them from al-Ḥasan; from ʿAbd al-Raḥmān ibn Samurah; from the Prophet (peace be upon him): **the same text, but the narration by al-Muʿtamir from his father includes no mention of the position of authority.**

حَدَّثَنِي عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، حَدَّثَنَا هُشَيْمٌ، عَنْ يُونُسَ، وَمَنْصُورٍ، وَحُمَيْدٍ، ح. وَحَدَّثَنَا أَبُو كَامِلٍ الْجَحْدَرِيُّ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ سِمَاكِ بْنِ عَطِيَّةَ، وَيُونُسَ بْنِ عُبَيْدٍ، وَهِشَامِ بْنِ حَسَّانَ فِي آخَرِينَ ح. وَحَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ، حَدَّثَنَا الْـمُعْتَمِرُ، عَنْ أَبِيهِ، ح. وَحَدَّثَنَا عُقْبَةُ بْنُ مُكْرَمٍ الْعَمِّيُّ، حَدَّثَنَا سَعِيدُ بْنُ عَامِرٍ، عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، كُلُّهُمْ عَنِ الْحَسَنِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. بِهَذَا الْحَدِيثِ. وَلَيْسَ فِي حَدِيثِ الْـمُعْتَمِرِ عَنْ أَبِيهِ ذِكْرُ الإِمَارَةِ.

Text Explanation

In hadith No. 3729, the Prophet says: ‘As for me, by God, if I say an oath, then I see that a different option is better, I shall, God willing, atone for my oath and do the better alternative’. And in hadith No. 3737, he says: ‘Whoever says an oath and then finds an alternative to be better should do what is better and atone for his oath’. Also, in hadith No. 3743: ‘Whoever

of you says an oath and then finds an alternative to be better should atone for his oath and do that which is better'.

In all the hadiths included in this chapter it is clear that when an oath has been said to confirm doing something or abandoning it and then it appears that breaking this oath is better than continuing with it, then it is recommended to break it, but an indemnity is required. This is agreed upon. Scholars further agree that the indemnity is not required before breaking the oath; rather, it is permissible to delay it until the break has taken place, but it may not be done before one has stated the oath. Scholars differ on the permissibility of an indemnity after the oath but before it has been broken. Mālik, al-Awzāʿī, al-Thawrī, al-Shāfiʿī, fourteen of the Prophet's Companions and many of the *tābiʿīn* say that it is valid. This is the view of the majority of scholars, even though they say that it is better done after the oath has been broken. Al-Shāfiʿī makes an exception in the case when the indemnity is in the form of fasting three days. He says that indemnity by fasting may not be done before the oath has been broken, because it is a physical act of worship and it is not valid before it is due, in the same way as prayer and fasting during Ramadan. Financial indemnity, however, may be given in advance, in the same way as zakat may be paid before it becomes due. Some of our scholars make an exception in the case of breaking an oath with a sinful action, saying that the indemnity cannot be made in advance, because it represents encouragement to disobey God. The majority, however, say it is acceptable like other cases. On the other hand, Abu Ḥanīfah and his followers as well as Ashhab of the Mālikī School say that indemnity may not precede the breaking of an oath in any case. The evidence in support of the view of the majority of scholars is the apparent meaning of these hadiths, and the analogy of paying zakat in advance.

In hadith 3729, the narrator, Abu Mūsā, mentions that the Prophet ordered that they should be given three camels with white humps, and in Hadith, 3731, they are five camels with white humps, and in No. 3735 a different word is used to describe the humps, indicating that they had white

and black humps. The general meaning is that they had white humps. As for the number of camels, mention of three does not negate that they were five, because an addition or increase is acceptable.

The Prophet tells Abu Mūsā and his Ashʿarī friends in Hadith 3729: 'It is not I who has given your mounts; it is God'. Al-Bukhari enters this hadith under a heading consisting of the Qur'anic verse: 'It is God who has created you and all that you do'. (37: 95) He means that all what people do is part of God's creation. This is the view of Sunni Muslims apart from the Muʿtazilah. Al-Māwardī said that the Prophet's statement means 'God has given me the mounts I am giving you; otherwise, I would not have any mounts to give you'. *Qadi* ʿIyāḍ said: It is probable that God revealed to him to give them mounts, or that they were included in the general division of the resources, but God knows best.

In Hadith 3731, the Ashʿarīs blame themselves, as thinking that they made the Prophet forget his oath. They thought that they should remind him of his oath, rather than take the camels as it appeared he had forgotten it.

In Hadith 3746, the Prophet's Companion narrating it says that God's Messenger (peace be upon him) said to him: 'ʿAbd al-Raḥmān ibn Samurah! Do not seek a position of authority; for if you are given it by asking for it, you will bear the responsibility for it; and if you are given it without seeking it, you will be helped'. This hadith makes several interesting points. The first is the discouragement of seeking or requesting a position of authority, whether it is a post of governor, judge, market controller or any other. The hadith also says that the one who requests such a position will not have God's help in discharging its responsibilities. As such, he will not be competent to undertake it. Therefore, he should not be given it. Hence the Prophet (peace be upon him) says in a different hadith: 'We do not give posts to those who ask for them or are eager to have them'.

Transmission

The chain of transmission of hadith No. 3734 includes: ‘Al-Ṣaʿiq, meaning Ibn Ḥazn narrated; Maṭar al-Warrāq narrated’. Al-Dāraquṭnī said: both al-Ṣaʿiq and Maṭar are not very solid. Maṭar did not hear the hadith from Zahdam; rather, he narrates it from al-Qāsim from Zahdam. Thus, al-Dāraquṭnī questions that Muslim relates this hadith. However, this questioning is not right, because Muslim does not relate the hadith as a main one, but rather as an endorsement of hadiths with complete and authentic chains. What is related by way of endorsement allows some weakness, because we rely mainly on the hadiths before the endorsement. Muslim discusses this point at the beginning of his Introduction, and we have explained it fully. He points out that he relates some hadiths that are poor in authenticity as endorsement of others that are authentic.

Many Hadith scholars disagree with al-Dāraquṭnī concerning the grading of these two narrators. Yaḥyā ibn Maʿīn and Abu Zurʿah said about al-Ṣaʿiq that he is reliable. Abu Ḥātim said that he is acceptable. All three say of Maṭar al-Warrāq that he is acceptable. They only grade his narration from ʿAṭā’ in particular as ‘weak’.

The chain of transmission of hadith No. 3735 includes Ḍurayb ibn Nuqayr. This is how this narrator is known to most authors and how it is entered in books speaking of names. Some mention him as Ibn Nufayr and some as Ibn Nufayl. In the other chain of transmission of this hadith we have ‘Abu al-Salīl’. He is the same man, Ḍurayb ibn Nuqayr, mentioned in the first chain.

At the end of hadith No. 3746, we have: ‘Abu Ahmad al-Julūdī said: Abu al-ʿAbbās al-Māsarjasī narrated; Shaybān ibn Farrūkh narrated: the same hadith’. This means that al-Julūdī narrates this hadith with a chain of transmission shorter by one narrator.

i. Related by al-Bukhari, 6623 and 6718; Abu Dāwūd in a shorter version, 3276; al-Nasā'ī, 3789; Ibn Mājah, 2107.

ii. Related by al-Bukhari, 4415 and 6678.

iii. Related by al-Bukhari in longer versions, 3313, 4385, 5518, 6680, 6721 and 7555, and in a shorter version, 5517, and 6649; al-Tirmidhī, 1826 and in a shorter version 1827; al-Nasā'ī, 4357, 4358 and 3788.

iv. Related by al-Tirmidhī, 1530.

v. Related by al-Nasā'ī, 3795 and 3796; Ibn Mājah, 2108.

vi. Related by al-Bukhari, 6662, 6722, 7146 and 7417; Abu Dāwūd, 3277, 3278, 2929; al-Tirmidhī, 1529; al-Nasā'ī, 3791, 3792, 3793, 3798, 3799 and 3800; and also in a shorter version 5399.

CHAPTER 4

AN OATH APPLIES AS THE ONE DEMANDING IT INTENDS

[3748–20]. (Dar al-Salam 4064) Yaḥyā ibn Yaḥyā and ʿAmr al-Nāqid narrated:[i] Yaḥyā said: Hushaym ibn Bashīr reported from ʿAbdullāh ibn Abi Ṣāliḥ; and ʿAmr said: Hushaym ibn Bashīr narrated; ʿAbdullāh ibn Abi Ṣāliḥ reported; from his father; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “Your oath applies as the other party believes you’. ʿAmr said: ‘as to what the other party believes you say”.’**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَعَمْرٌو النَّاقِدُ. قَالَ يَحْيَى: أَخْبَرَنَا هُشَيْمُ بْنُ بَشِيرٍ، عَنْ عَبْدِ اللهِ بْنِ أَبِي صَالِحٍ، وَقَالَ عَمْرٌو: حَدَّثَنَا هُشَيْمُ بْنُ بَشِيرٍ، أَخْبَرَنَا عَبْدُ اللهِ بْنُ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «يَمِينُكَ عَلَى مَا يُصَدِّقُكَ عَلَيْهِ صَاحِبُكَ». وَقَالَ عَمْرٌو: «يُصَدِّقُكَ بِهِ صَاحِبُكَ».

[3749–21]. (Dar al-Salam 4065) Abu Bakr ibn Abi Shaybah narrated: Yazīd ibn Ḥārūn narrated; from Hushaym; from ʿAbbād ibn Abi Ṣāliḥ; from his father; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “An oath is taken as the one demanding it intends”.’**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنْ هُشَيْمٍ، عَنْ عَبَّادِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الْيَمِينُ عَلَى نِيَّةِ الْـمُسْتَحْلِفِ».

Text Explanation

This hadith is understood to refer to an oath stated at the demand of a judge. If one person makes a claim against another, and a judge requires him to make his statement under oath, and he does, his oath applies as the judge intends, even if he makes an ambiguous statement, intending something different from the judge's intention. The ambiguity stands him in no good stead and is of no benefit to him. This is unanimously agreed upon, and is evidenced by this hadith and the unanimity of scholars. On the other hand, if he says an oath, without being required by the judge, and makes it ambiguous, the ambiguity benefits him and he does not break his oath, whether he takes the initiative and swears without being requested, or is requested by someone other than the judge or someone appointed by the judge. No consideration is given to the intention of anyone other than the judge. The sum of all this is that an oath is meant according to the intention of the person saying it, except when a judge or his deputy requires him to swear regarding a claim made against him. In this case, the oath is according to the intention of the one requiring the oath. If a person swears in front of a judge, without the judge asking him to do so in regard to a claim, the oath is according to the intention of the person saying it. All this applies equally to an oath by God, or an oath of divorce or setting a slave free. However, if the judge asks him to say an oath of divorcing his wife or setting a slave free, ambiguity is of benefit to him, because a judge may not ask for such oaths; he can only demand an oath by God, the Exalted. It should be understood that ambiguity in an oath may not break an oath, but it is not permissible to resort to, if it leads to the negation of someone's due

right. This is unanimously agreed upon. Such is the detailed view of the Shāfiʿī School.

Qadi ʿIyāḍ states the views of Mālik and Mālikī scholars, which contain some differences and details. He says:

> Scholars agree that a person stating an oath, without being asked and with no particular right being dependant on his oath swears according to his own intention and what he says is accepted. However, if he swears for someone else, regarding a right or a document, whether voluntarily or by a judge's order, scholars agree that he is bound to the apparent meaning of his oath, whether he swears it voluntarily or by request. As for an oath regarding what is between him and God, it is said by some that the oath is according to the intention of the one for whom the oath is stated, while others said that it is according to the intention of the swearer. It is also said by some that if he is asked to swear, then the oath is according to the intention of the one for whom the oath is stated while if he voluntarily swears then it is according to his own intention. This last view is upheld by ʿAbd al-Malik and Suḥnūn. It is the apparent meaning of what Mālik and Ibn al-Qāsim say. The opposite is also stated, according to what Yaḥyā reports from Ibn al-Qāsim. It is further said that his intention benefits him in what is not judged against him. A voluntary oath and a required one are treated differently in respect of what is judged against him. This is also reported from Ibn al-Qāsim. Mālik is quoted as saying that what is intended for scheming and to deceive is sinful and the oath is broken, but if it is intended as justification, it is acceptable. Ibn Ḥabīb quotes Mālik as saying: what is intended for scheming and to deceive is according to the swearer's intention, and what is concerning a claim is according to the intention of the one requiring the oath. *Qadi* ʿIyāḍ adds that there is no disagreement among scholars that an oath that negates someone's right incurs a sin

by the swearer, even if he resorts to ambiguity in his oath, but God knows best.

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i. Related by Abu Dāwūd, 3255; al-Tirmidhī, 1354; Ibn Mājah, 2120 and 2121.

CHAPTER 5

EXPRESSING AN EXCEPTION

[3750–22]. (Dar al-Salam 4066) Abu al-Rabīʿ al-ʿAtakī and Abu Kāmil al-Jaḥdarī Fuḍayl ibn Ḥusayn narrated to me (Abu al-Rabīʿ's text): both said: Ḥammād (who is Ibn Zayd) narrated; Ayyūb narrated; from Muhammad; from Abu Hurayrah. He said: **'Solomon had sixty women and he said: "I shall go around them all tonight, and each one of them shall get pregnant, then each will give birth to a fine lad who will fight for God's cause". Only one of them became pregnant and she gave birth to half a person. God's Messenger (peace be upon him) said: "Had he made the exception, each one of them would have given birth to a fine lad who would fight for God's cause".'**

حَدَّثَنِي أَبُو الرَّبِيعِ الْعَتَكِيُّ، وَأَبُو كَامِلٍ الْجَحْدَرِيُّ فُضَيْلُ بْنُ حُسَيْنٍ (وَاللَّفْظُ لأَبِي الرَّبِيعِ) قَالا: حَدَّثَنَا حَمَّادٌ (وَهُوَ ابْنُ زَيْدٍ)، حَدَّثَنَا أَيُّوبُ، عَنْ مُحَمَّدٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: كَانَ لِسُلَيْمَانَ سِتُّونَ امْرَأَةً، فَقَالَ: لأَطُوفَنَّ عَلَيْهِنَّ اللَّيْلَةَ فَتَحْمِلُ كُلُّ وَاحِدَةٍ مِنْهُنَّ، فَتَلِدُ كُلُّ وَاحِدَةٍ مِنْهُنَّ غُلاَمًا فَارِسًا، يُقَاتِلُ فِي سَبِيلِ اللهِ. فَلَمْ تَحْمِلْ مِنْهُنَّ إِلاَّ وَاحِدَةٌ، فَوَلَدَتْ نِصْفَ إِنْسَانٍ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَوْ كَانَ اسْتَثْنَى، لَوَلَدَتْ كُلُّ وَاحِدَةٍ مِنْهُنَّ غُلاَمًا فَارِسًا يُقَاتِلُ فِي سَبِيلِ اللهِ».

[3751–23]. (Dar al-Salam 4067–4068) Muhammad ibn ʿAbbād and Ibn Abi ʿUmar narrated:[i] (Ibn Abi ʿUmar's text): both said: Sufyān

narrated; from Hishām ibn Ḥujayr; from Ṭāwūs; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **‘God’s Prophet, Solomon ibn Dāwūd, said: “I shall go tonight to seventy women and each one shall give birth to a lad who will fight for God’s cause.” His friend, or the angel, said to him: “Say: ‘God willing’”, but he did not say it, and he forgot. None of his women gave birth except one who delivered half a boy. God’s Messenger said: “Had he said, ‘God willing,’ he would not have broken his oath and he would have had what he wanted”.’**

وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبَّادٍ، وَابْنُ أَبِي عُمَرَ، (وَاللَّفْظُ لِابْنِ أَبِي عُمَرَ) قَالا: حَدَّثَنَا سُفْيَانُ، عَنْ هِشَامِ بْنِ حُجَيْرٍ، عَنْ طَاوُسٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «قَالَ سُلَيْمَانُ بْنُ دَاوُدَ، نَبِيُّ اللهِ: لأَطُوفَنَّ اللَّيْلَةَ عَلَى سَبْعِينَ امْرَأَةً، كُلُّهُنَّ تَأْتِي بِغُلاَمٍ يُقَاتِلُ فِي سَبِيلِ اللهِ. فَقَالَ لَهُ صَاحِبُهُ، أَوِ الْـمَلَكُ، قُلْ: إِنْ شَاءَ اللهُ. فَلَمْ يَقُلْ، وَنَسِيَ. فَلَمْ تَأْتِ وَاحِدَةٌ مِنْ نِسَائِهِ إِلاَّ وَاحِدَةٌ، جَاءَتْ بِشِقِّ غُلاَمٍ». فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَلَوْ قَالَ إِنْ شَاءَ اللهُ، لَمْ يَحْنَثْ. وَكَانَ دَرَكًا لَهُ فِي حَاجَتِهِ».

Ibn Abi ʿUmar narrated; Sufyān narrated; from Abu al-Zinād; from al-Aʿraj; from Abu Hurayrah; from the Prophet: **the same or similar text.**

وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، عَنْ أَبِي الزِّنَادِ، عَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: مِثْلَهُ أَوْ نَحْوَهُ.

[3752–24]. (Dar al-Salam 4069) ʿAbd ibn Ḥumayd narrated:[ii] ʿAbd al-Razzāq ibn Hammām reported; Maʿmar reported; from Ibn

Ṭāwūs; from his father; from Abu Hurayrah. He said: **‘Solomon ibn Dāwūd said: “I shall go tonight to seventy women and each of them will give birth to a lad who will fight for God’s cause”. He was told to say, ‘God willing’, but he did not say it. He went to them, but none of them gave birth except one who delivered half a human. God’s Messenger (peace be upon him) said: “Had he said, ‘God willing’, he would not have broken his oath and he would have had what he wanted”.’**

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ بْنُ هَمَّامٍ، أَخْبَرَنَا مَعْمَرٌ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ سُلَيْمَانُ بْنُ دَاوُدَ: لأُطِيفَنَّ اللَّيْلَةَ عَلَى سَبْعِينَ امْرَأَةً، تَلِدُ كُلُّ امْرَأَةٍ مِنْهُنَّ غُلاَمًا يُقَاتِلُ فِي سَبِيلِ اللهِ. فَقِيلَ لَهُ قُلْ: إِنْ شَاءَ اللهُ. فَلَمْ يَقُلْ. فَأَطَافَ بِهِنَّ، فَلَمْ تَلِدْ مِنْهُنَّ إِلاَّ امْرَأَةٌ وَاحِدَةٌ نِصْفَ إِنْسَانٍ. قَالَ: فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَوْ قَالَ إِنْ شَاءَ اللهُ، لَمْ يَحْنَثْ. وَكَانَ دَرَكًا لِحَاجَتِهِ».

[3753–25]. (Dar al-Salam 4070) Zuhayr ibn Ḥarb narrated to me: Shabābah narrated; Warqā’ narrated to me; from Abu al-Zināḍ; from al-Aʿraj; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **‘Solomon ibn Dāwūd said: “I shall go tonight to ninety women and each of them will give birth to a lad who will fight for God’s cause”. His friend said to him: “Say, ‘God willing’”, but he did not say God willing. He went to them all, but none of them got pregnant, except one who delivered half a man. “By Him who holds Muhammad’s soul in His hand, had he said, ‘God willing’, they would have all fought on their horses for God’s cause”.’**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا شَبَابَةُ، حَدَّثَنِي وَرْقَاءُ، عَنْ أَبِي الزِّنَادِ، عَنِ الأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «قَالَ سُلَيْمَانُ بْنُ دَاوُدَ لأَطُوفَنَّ اللَّيْلَةَ عَلَى تِسْعِينَ امْرَأَةً، كُلُّهَا تَأْتِي بِفَارِسٍ يُقَاتِلُ فِي سَبِيلِ اللهِ. فَقَالَ لَهُ صَاحِبُهُ: قُلْ إِنْ شَاءَ اللهُ. فَلَمْ يَقُلْ إِنْ شَاءَ اللهُ. فَطَافَ عَلَيْهِنَّ جَمِيعًا، فَلَمْ تَحْمِلْ مِنْهُنَّ إِلاَّ امْرَأَةٌ وَاحِدَةٌ، فَجَاءَتْ بِشِقِّ رَجُلٍ. وَايْمُ الَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَوْ قَالَ إِنْ شَاءَ اللهُ لَجَاهَدُوا فِي سَبِيلِ اللهِ فُرْسَانًا، أَجْمَعُونَ».

[3754–000].[iii] Suwayd ibn Saʿīd narrated to me: Ḥafṣ ibn Maysarah narrated; from Mūsā ibn ʿUqbah; from Abu al-Zinād; with the same chain of transmission: **the same text, except that he said: ‘All shall be pregnant with a lad who will fight for God’s cause’.**

وَحَدَّثَنِيهِ سُوَيْدُ بْنُ سَعِيدٍ، حَدَّثَنَا حَفْصُ بْنُ مَيْسَرَةَ، عَنْ مُوسَى بْنِ عُقْبَةَ، عَنْ أَبِي الزِّنَادِ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. غَيْرَ أَنَّهُ قَالَ: «كُلُّهَا تَحْمِلُ غُلاَمًا يُجَاهِدُ فِي سَبِيلِ اللهِ».

Text Explanation

This chapter includes the different versions of the hadith concerning Prophet Solomon ibn Dāwūd (peace be upon them). The hadith includes some interesting points, such as the recommendation that when one says, ‘I shall do such-and-such’, one should add, ‘God willing’. This is based on the Qur’anic instruction: ‘Never say about anything, “I shall do this tomorrow”, without adding, “if God so wills”.’ (18: 23–24) It is also based on this hadith. Another point to bear in mind is if the person swears and says with his oath, ‘God willing’, he will not break his oath if he does not do it. Moreover, this exception, i.e., God willing, means that the oath is not applicable, because the Prophet says in this hadith: ‘Had he said, ‘God willing’, he would not have broken his oath and he would have had what he

wanted'. For this exception to be valid, two conditions need to be met: the first is that he should say it along with his oath, and the second is that before completing the oath, he should have intended to say, 'God willing'. *Qadi* ʿIyāḍ said:

> Muslim scholars agree that saying, 'God willing', stops the oath being binding, provided that it is stated along with the oath. Had it been valid if stated separately, as some early scholars were reported to say, no one would have ever broken an oath or needed to atone for doing so. They differ as to what is meant by 'along with the oath'. Mālik, al-Awzāʿī, al-Shāfiʿī and the majority of scholars said that, 'God willing', should be said without a pause between it and the oath, apart from a pause to take a breath. Ṭāwūs, al-Ḥasan and a number of *tābiʿīn* scholars said that the exception is valid if stated before one leaves the place. Qatādah said: 'provided one does not leave the place or speaks'. ʿAṭā' said: 'during what it takes to milk a she-camel', while Saʿīd ibn Jubayr gives the period as four months and Ibn ʿAbbās is reported to have said that the exception can be at any time, when the swearer remembers it.

Some explain these reports from these scholars as meaning that 'saying God willing is desirable for a blessing', as God says: 'Should you forget, then call your Lord to mind'. (18: 24) They do not mean a release from the oath and prevention of breaking it.

If one says the exception, 'God willing', in anything other than an oath by God, such as saying: 'You are divorced, God willing', or 'You are free, God willing', or 'You are forbidden to me, God willing', or 'I owe so-and-so a thousand pounds, God willing', or 'If God grants my relative recovery, I owe to God one month fasting, God willing', such exception is valid in all such matters, according to al-Shāfiʿī, Kufi scholars, Abu Thawr and others, in the same way as it is valid in respect of an oath by God. Thus, the person concerned does not break his oath, and no divorce, freeing a slave,

forbidding of one's wife, pledge, acknowledgement or anything else attached to his statement is valid or applicable. Mālik and al-Awzāʿī said that the exception is not valid in any of these matters; it is valid only in respect of an oath by God.

In hadith No. 3751, the Prophet says of Solomon: 'Had he said, "God willing", he would not have broken his oath'. This indicates that the exception must be verbal, not merely by intention. This is agreed by al-Shāfiʿī, Abu Ḥanīfah, Mālik, Ahmad and all scholars, apart from what some Mālikī scholars say that according to analogy, Mālik's words mean that the exception done only by intention, without verbal expression, is valid.

Hadith No. 3753 mentions that Solomon's friend told him to say, 'God willing'. This may be cited as evidence in support of the view that the exception is valid if separated from the oath. The answer, according to the majority view, is that it is possible that his friend said this to Solomon during the oath. Alternatively, Solomon might have not said an oath, for the hadith does not specifically mention an oath. But God knows best.

In these hadiths Solomon is mentioned first to have sixty women. Another hadith mentions his going to seventy women, and a third puts the number at ninety. These are the versions in Muslim's *Ṣaḥīḥ*, but in other anthologies one report puts the number at ninety-nine, and another makes it a full hundred. These figures are not contradictory, because the mention of the lesser number does not negate the larger one. We mentioned this several times. It is part of the concept of numbers, but it is not upheld by most scholars of methodology.

The declared intention by Solomon to go to such a large number of women in one night refers to a special privilege given to prophets, which makes clear that they were given extra strength, but God knows best. Solomon said that each woman would then give birth to a fine lad who would, in time, fight for God's cause. This is said as a wish for what is good and to serve God's cause. He did not wish it for any worldly end.

The Prophet says in hadith No. 3750: ‘Only one of them became pregnant and she gave birth to half a person’, and in the next hadith, ‘she delivered half a boy’. It is said that this is what the Qur’an refers to as it says: ‘We had tried Solomon, and placed a body on his throne’. (38: 34) The Prophet says in hadith No. 3751: ‘Had he made the exception, each one of them would have given birth to a fine lad who would fight for God’s cause’. This is understood to refer to information given to the Prophet regarding Solomon’s case. It does not mean that everyone who uses the exception in his oath will be granted his wish. In hadith No. 3753, Solomon’s friend tells him to say, ‘God willing’, but he did not and forgot to say it. It is said that ‘his friend’ refers to an angel; which is probably the apparent meaning. On the other hand, it refers to some human friend.

Also in hadith No. 3753, the Prophet says: ‘Had he said, ‘God willing’, they would have all fought on their horses for God’s cause’. This shows the permissibility of using the formula, ‘had such-and-such been done…’, or ‘were it not for this…’. *Qadi* ʿIyāḍ said:

> There are several examples of this usage in the Qur’an and in what the Prophet’s companions and early scholars said. Al-Bukhari devotes a chapter with the heading: ‘The permissible usage of “had this…”. He includes in this chapter Lot’s statement: ‘Would that I had the strength to defeat you’. (11: 80) He also includes the Prophet’s statements: ‘Were I to stone anyone without clear evidence I would have stoned this one’, ‘I would have continued, had the month not finished’, ‘Were it not for the fact that your people were only recently unbelievers, I would have completed its building on Abraham’s foundations’, and ‘Had it not been for my migration, I would have chosen to belong to the Anṣār’, etc.
>
> What is understood from al-Bukhari’s heading and what he quotes in this chapter from the Qur’an and hadiths is that it is permissible to use such expressions in regard to the future. In other words, to refrain from doing something in order to prevent a consequence. This comes

mainly under, ‘were it not for so-and-so…’. Al-Bukhari does not include in his chapter anything apart from what relates to the future, or to what is absolutely certain, such as ‘had it not been for my migration…’. He does not include anything related to the past or to what has already happened, or what implies objection to, or dissatisfaction with God’s will. A different hadith in Muslim’s *Ṣaḥīḥ* quotes the Prophet: ‘If something happens to you, do not say: had I done this, that would have happened. Say instead: God has determined, and what God wills is done’.

Some scholars said that this applies if one says it as absolutely certain and inevitable, as though one knows what is beyond human perception. It is like someone saying, ‘had this happened, the result would have been that’, making no mention of God’s will and having no consideration of His prior determination and what He knows of things unknown to us. On the other hand, if one says it with submission to God’s will, recognizing that His will determines things, it is acceptable.

Some say that these formulae are different. To me, they are the same when they are used in reference to what is beyond human knowledge and beyond the speaker’s control. Such usage implies determination of what man has no access to and objection to God’s will, as the hadith shows. It is like the assertions of the hypocrites: ‘If only they had listened to us, they would not have been slain’. (3: 168) ‘Had they stayed with us, they would not have died, nor would they have been killed’. (3: 156) and ‘Had we had any say in the matter, we should not have been slaughtered here’. (3: 154) God Almighty refutes their false assertions, saying: ‘Ward off death from yourselves, then, if what you say be true’. (3: 168) It is such statements and assertions that are prohibited.

As for this hadith we are discussing, the Prophet states what he knows for certain, that had Solomon said, ‘God willing’, he would have had the

offspring to fight for God's cause. This is not something that can be known through surmise or research. The Prophet is certainly speaking of a truth imparted to him by God. This is similar to his statement: 'Had it not been for the Children of Israel, meat would not have rotted; and were it not for Eve, no woman would have been false to her husband'. There is no contradiction between this hadith and the one that discourages the usage of this formula in one's speech. God says in the Qur'an: 'Say: Had you stayed in your homes, those of you who were destined to be killed would have gone to their deathbeds'. (3: 154) 'If they were to return to life they would go back to that which they have been forbidden'. (6: 28) 'Had it not been for a decree from God that had already gone forth, you would have been severely punished for what you have taken'. (8: 68) 'Were it not that all people would become one community [of unbelievers], We would have…' (43: 33). 'Had he not been of those who truly glorified God, he would have remained in the whale's belly till Resurrection Day'. (37: 143–144) In all these instances, God is telling about what has already happened, or giving confirmed information about what is going to happen. When a person uses such a formula to explain why he has refrained from doing something which is within his ability, his usage is acceptable because he is giving information about the cause of not doing something, or the absence of something leading to certain consequences. The formula is used to explain the reason for what happened or what prevented a happening. There is nothing wrong with such usage, unless the user is lying, as when the hypocrites said to the Prophet's Companions: 'Had we known there would be a fight, we would certainly have followed you'. (3: 167) But God knows best.

i. Related by al-Bukhari, 6720.

ii. Related by al-Bukhari, 5242; al-Nasā'ī, 3865.
iii. In Dar al-Salam's edition, this hadith is attached to the previous one.

CHAPTER 6

NO PERSISTENCE WITH HARMFUL OATH

[3755–26]. (Dar al-Salam 4071) Muhammad ibn Rāfiʿ narrated:[i] ʿAbd al-Razzāq narrated; Maʿmar narrated; from Hammām ibn Munabbih. He said: this is what Abu Hurayrah narrated to us from God's Messenger (peace be upon him), adding a number of hadiths including: **'And God's Messenger (peace be upon him) said: "By God, it is more sinful for any of you to persist with honouring his oath against his family than to give its expiation [for breaking it] which God has stipulated".'**

حَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، حَدَّثَنَا مَعْمَرٌ، عَنْ هَمَّامِ بْنِ مُنَبِّهٍ قَالَ: هَذَا مَا حَدَّثَنَا أَبُو هُرَيْرَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ أَحَادِيثَ مِنْهَا: وَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَاللهِ لأَنْ يَلَجَّ أَحَدُكُمْ بِيَمِينِهِ فِي أَهْلِهِ آثَمُ لَهُ عِنْدَ اللهِ، مِنْ أَنْ يُعْطِيَ كَفَّارَتَهُ الَّتِي فَرَضَ اللهُ».

Text Explanation

This hadith means that if a person has stated an oath with regard to his wife or his family and they are afflicted by his insistence on honouring his oath, while breaking it does not involve any prohibited thing, then it is better for him to break his oath. He should do whatever is needed; break his oath and give the expiation for it. If such a person says that he shall not break his oath, and that he fears that it is forbidden to break an oath, he is wrong.

Indeed, his insistence on the oath and refusal to break it despite what it means of continued harm to his family is more sinful.

We must make clear that doing what breaks the oath should not be forbidden. If it is forbidden, then the scenario is different. How come, then, that the Prophet says it is ‘more sinful’ to persist with the oath than to break it? This expression suggests that both actions involve a degree of sin, with one being greater than the other. The answer is that this is a form of expression to reflect what the person who swore the oath says and thinks. He persists with his oath thinking that to break it is sinful. The Prophet assures him that persistence with the harm caused to his family by his oath is more sinful than what he imagines of breaking the oath, had its break involved any sin, but God knows best.

i. Related by al-Bukhari, 6625.

CHAPTER 7

A PLEDGE MADE PRIOR TO ACCEPTING ISLAM

[3756–27]. (Dar al-Salam 4072) Muhammad ibn Abu Bakr al-Muqaddamī, Muhammad ibn al-Muthannā and Zuhayr ibn Ḥarb narrated (Zuhayr's text): they said:[i] Yaḥyā (who is Ibn Saʿīd al-Qaṭṭān) narrated; from ʿUbaydullāh. He said: Nāfiʿ reported to me; from Ibn ʿUmar; that **'ʿUmar said: "Messenger of God, prior to accepting Islam, I had pledged to spend a night of *iʿtikāf* in the Sacred Mosque". The Prophet said: "Honour your pledge".'**

حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْـمُقَدَّمِيُّ، وَمُحَمَّدُ بْنُ الْـمُثَنَّى، وَزُهَيْرُ بْنُ حَرْبٍ (وَاللَّفْظُ لِزُهَيْرٍ) قَالُوا: حَدَّثَنَا يَحْيَى (وَهُوَ ابْنُ سَعِيدٍ الْقَطَّانُ)، عَنْ عُبَيْدِ اللهِ قَالَ: أَخْبَرَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ، أَنَّ عُمَرَ قَالَ: يَا رَسُولَ اللهِ إِنِّي نَذَرْتُ فِي الْجَاهِلِيَّةِ أَنْ أَعْتَكِفَ لَيْلَةً فِي الْـمَسْجِدِ الْحَرَامِ. قَالَ: «فَأَوْفِ بِنَذْرِكَ».

[3757–000]. (Dar al-Salam 4073) Abu Saʿīd al-Ashajj narrated:[ii] Abu Usāmah narrated [H]. Also, Muhammad ibn al-Muthannā narrated; ʿAbd al-Wahhāb (meaning al-Thaqafī) narrated [H]. And, Abu Bakr ibn Abi Shaybah, Muhammad ibn al-ʿAlā' and Isḥāq ibn Ibrāhīm narrated; all from Ḥafṣ ibn Ghiyāth [H]. Further, Muhammad ibn ʿAmr ibn Jabalah ibn Abi Rawwād narrated; Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; all of them from

ʿUbaydullāh; from Nāfiʿ; from Ibn ʿUmar. Ḥafṣ was the only one of them to say: ‘from ʿUmar’: **the same text. In Abu Usāmah’s and al-Thaqafī’s narrations: ‘a night in *iʿtikāf*’, while in Shuʿbah’s narration: ‘He stipulated for him a day to spend in *iʿtikāf*’. Ḥafṣ’s narration does not mention either day or night.**

وَحَدَّثَنَا أَبُو سَعِيدٍ الأَشَجُّ، حَدَّثَنَا أَبُو أُسَامَةَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا عَبْدُ الْوَهَّابِ (يَعْنِي الثَّقَفِيَّ)، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ الْعَلاَءِ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، جَمِيعًا عَنْ حَفْصِ بْنِ غِيَاثٍ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ بْنِ أَبِي رَوَّادٍ، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، كُلُّهُمْ عَنْ عُبَيْدِ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ. وَقَالَ حَفْصٌ مِنْ بَيْنِهِمْ: عَنْ عُمَرَ، بِهَذَا الْحَدِيثِ. أَمَّا أَبُو أُسَامَةَ وَالثَّقَفِيُّ فَفِي حَدِيثِهِمَا اعْتِكَافُ لَيْلَةٍ. وَأَمَّا فِي حَدِيثِ شُعْبَةَ فَقَالَ: جَعَلَ عَلَيْهِ يَوْمًا يَعْتَكِفُهُ. وَلَيْسَ فِي حَدِيثِ حَفْصٍ ذِكْرُ يَوْمٍ وَلاَ لَيْلَةٍ.

[3758–28]. (Dar al-Salam 4074) Abu al-Ṭāhir narrated to me:[iii] ʿAbdullāh ibn Wahb reported; Jarīr ibn Ḥāzim narrated; that Ayyūb narrated to him; that Nāfiʿ narrated to him; that ʿAbdullāh ibn ʿUmar narrated to him; that ‘‘**Umar ibn al-Khaṭṭāb asked God’s Messenger (peace be upon him) when he was at al-Jiʿrānah, after returning from Taif, saying: “Messenger of God, prior to accepting Islam, I had pledged to spend a day of *iʿtikāf* in the Sacred Mosque. What do you say [I should do]?” The Prophet said: “Go and spend a day of *iʿtikāf*”.**

God’s Messenger had given ʿUmar a slave woman from his own [share of] one-fifth. When God’s Messenger released all enslaved prisoners, ʿUmar ibn al-Khaṭṭāb heard them saying: “God’s Messenger has set us free”. He asked: “What is this?”

People said: “God’s Messenger has set the enslaved prisoners free”. ʿUmar said [to his son]: “Abdullāh, go to that maid and set her free”.’

وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، حَدَّثَنَا جَرِيرُ بْنُ حَازِمٍ، أَنَّ أَيُّوبَ حَدَّثَهُ، أَنَّ نَافِعًا حَدَّثَهُ، أَنَّ عَبْدَ اللهِ بْنَ عُمَرَ حَدَّثَهُ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ سَأَلَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهُوَ بِالْجِعْرَانَةِ، بَعْدَ أَنْ رَجَعَ مِنَ الطَّائِفِ، فَقَالَ: يَا رَسُولَ اللهِ، إِنِّي نَذَرْتُ فِي الْجَاهِلِيَّةِ أَنْ أَعْتَكِفَ يَوْمًا فِي الْـمَسْجِدِ الْحَرَامِ، فَكَيْفَ تَرَى؟ قَالَ: «اذْهَبْ فَاعْتَكِفْ يَوْمًا».

قَالَ: وَكَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَدْ أَعْطَاهُ جَارِيَةً مِنَ الْخُمْسِ فَلَمَّا أَعْتَقَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سَبَايَا النَّاسِ سَمِعَ عُمَرُ بْنُ الْخَطَّابِ أَصْوَاتَهُمْ يَقُولُونَ: أَعْتَقَنَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَقَالَ مَا هَذَا؟ فَقَالُوا: أَعْتَقَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سَبَايَا النَّاسِ. فَقَالَ عُمَرُ: يَا عَبْدَ اللهِ اذْهَبْ إِلَى تِلْكَ الْجَارِيَةِ فَخَلِّ سَبِيلَهَا.

[3759–000]. (Dar al-Salam 4075) ʿAbd ibn Ḥumayd narrated: ʿAbd al-Razzāq reported; Maʿmar reported; from Ayyūb; from Nāfiʿ; from Ibn ʿUmar. He said: **‘When the Prophet (peace be upon him) returned from Ḥunayn, ʿUmar asked God’s Messenger (peace be upon him) about a pledge he had made prior to his acceptance of Islam, spending a day in *iʿtikāf*…’ he added the same meaning as the narration by Jarīr ibn Ḥāzim.**

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، قَالَ: لَمَّا قَفَلَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ حُنَيْنٍ، سَأَلَ عُمَرُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ نَذْرٍ كَانَ نَذَرَهُ فِي الْجَاهِلِيَّةِ: اعْتِكَافِ يَوْمٍ. ثُمَّ ذَكَرَ بِمَعْنَى حَدِيثِ جَرِيرِ بْنِ حَازِمٍ.

[3760–000]. (Dar al-Salam 4076) Ahmad ibn ʿAbdah al-Ḍabbī narrated: Ḥammād ibn Zayd narrated; Ayyūb narrated; from Nāfiʿ. He said: **‘God’s Messenger’s ʿumrah from al-Jiʿrānah was mentioned at Ibn ʿUmar’s place.’ He said: ‘He did not perform the ʿumrah from there’. He added: ‘Prior to accepting Islam, ʿUmar had pledged to spend a night in *iʿtikāf*…’ adding a text similar to the narration by Jarīr ibn Ḥāzim and Maʿmar from Ayyūb.**

وَحَدَّثَنَا أَحْمَدُ بْنُ عَبْدَةَ الضَّبِّيُّ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، حَدَّثَنَا أَيُّوبُ، عَنْ نَافِعٍ، قَالَ: ذُكِرَ عِنْدَ ابْنِ عُمَرَ عُمْرَةُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنَ الْجِعْرَانَةِ. فَقَالَ لَمْ يَعْتَمِرْ مِنْهَا. قَالَ: وَكَانَ عُمَرُ نَذَرَ اعْتِكَافَ لَيْلَةٍ فِي الْجَاهِلِيَّةِ. ثُمَّ ذَكَرَ نَحْوَ حَدِيثِ جَرِيرِ بْنِ حَازِمٍ وَمَعْمَرٍ عَنْ أَيُّوبَ.

[3761–000]. (Dar al-Salam 4077) ʿAbdullāh ibn ʿAbd al-Raḥmān al-Dārimī narrated to me: Ḥajjāj ibn al-Minhāl narrated; Ḥammād narrated; from Ayyūb [H]. Also, Yaḥyā ibn Khalaf narrated; ʿAbd al-Aʿlā narrated; from Muhammad ibn Isḥāq; both from Nāfiʿ; from Ibn ʿUmar: **the same text about a pledge. In both their narration: ‘a day of *iʿtikāf*’**.

وَحَدَّثَنِي عَبْدُ اللهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ، حَدَّثَنَا حَجَّاجُ بْنُ الْمِنْهَالِ، حَدَّثَنَا حَمَّادٌ، عَنْ أَيُّوبَ، ح. وَحَدَّثَنَا يَحْيَى بْنُ خَلَفٍ، حَدَّثَنَا عَبْدُ الأَعْلَى، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، كِلاَهُمَا عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، بِهَذَا الْحَدِيثِ فِي النَّذْرِ. وَفِي حَدِيثِهِمَا جَمِيعًا اعْتِكَافُ يَوْمٍ.

Text Explanation

In this chapter we have the hadith mentioning that before embracing Islam, ʿUmar ibn al-Khaṭṭāb had made a pledge to spend a night or a day of *iʿtikāf*, i.e., staying in the mosque for voluntary worship. The Prophet told him to honour his pledge. Scholars differ as to the validity of a pledge by an unbeliever. Mālik, Abu Ḥanīfah, all Kufi scholars and the majority of our Shāfiʿī scholars say that it is not valid. Al-Mughīrah al-Makhzūmī, Abu Thawr, al-Bukhari, Ibn Jarīr and some of our scholars say that it is valid and their evidence is the apparent meaning of this hadith concerning ʿUmar. The first group respond that the hadith is understood to indicate desirability, meaning that it is desirable for a Muslim to do the worship he had pledged to do before embracing Islam. The hadith provides evidence in support of al-Shāfiʿī's and other scholars' view that *iʿtikāf* is valid without fasting, and that it is valid at night and during the day, whether it is for one night or more or part of one night. All this is based on this hadith mentioning ʿUmar's situation.

The version that mentions *iʿtikāf* for one day does not contradict the other mentioning one night, because it is probable that ʿUmar asked about each scenario and the Prophet ordered him to honour his pledge. This concludes that *iʿtikāf* is valid if it is done at night alone. This is confirmed by Nāfiʿ's narration from Ibn ʿUmar that '*'ʿUmar pledged to spend one night of iʿtikāf* in the Sacred Mosque, and he asked the Prophet about it. The Prophet told him to honour his pledge. ʿUmar spent a night of *iʿtikāf*'. This version is related by al-Dāraquṭnī who says that its chain of transmission is confirmed. This is the view of al-Shāfiʿī and shared by al-Ḥasan al-Baṣrī, Abu Thawr; Dāwūd and Ibn al-Mundhir. It is stated in the more authentic of two reports from Ahmad. Ibn al-Mundhir says that it is also reported from ʿAlī and Ibn Masʿūd. On the other hand, Ibn ʿUmar, Ibn ʿAbbās, ʿĀ'ishah, ʿUrwah ibn al-Zubayr, al-Zuhrī, Mālik, al-Awzāʿī, al-Thawrī, Abu Ḥanīfah, as well as one report from Ahmad and Isḥāq say that *iʿtikāf* is not valid without fasting. This is the view of the majority of scholars.

Hadith No. 3760 says: ‘God’s Messenger’s ʿumrah from al-Jiʿrānah was mentioned at Ibn ʿUmar’s place. He said: “He did not perform the ʿumrah from there”.’ This is understood to mean that Ibn ʿUmar did not know that the Prophet performed the ʿumrah from al-Jiʿrānah. It is confirmed that he did, and confirmation is given greater weight than negation because it implies added information. In the Book of Pilgrimage in his *Ṣaḥīḥ* anthology, Muslim mentions the Prophet’s performance of the ʿumrah from al-Jiʿrānah in the year of the Battle of Hunayn. The hadith is narrated by Anas ibn Mālik, but God knows best.

i. Related by al-Bukhari, 2032.

ii. Related by al-Bukhari, 2042 and 2043; Abu Dāwūd, 3325; al-Tirmidhī, 1539; al-Nasā’ī, 3829; Ibn Mājah, 1772 and 2129.

iii. Related by al-Bukhari in similar wording, 3144 and in a shorter version, 4320; al-Nasā’ī in a shorter version, 3830.

CHAPTER 8

TREATMENT OF SLAVES

[3762–29]. (Dar al-Salam 4078) Abu Kāmil Fuḍayl ibn Ḥusayn al-Jaḥdarī narrated:[i] Abu ʿAwānah narrated; from Firās; from Dhakwān Abu Ṣāliḥ; from Zādhān Abu ʿUmar. He said: **‘I went to Ibn ʿUmar when he had just given a slave his freedom. He took a twig or something from the ground and said: “I do not earn this much of a reward for it, but I heard God’s Messenger (peace be upon him) say: ‘For anyone who slaps or beats his slave, the expiation is to set that slave free’.”’**

حَدَّثَنِي أَبُو كَامِلٍ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ، حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ فِرَاسٍ، عَنْ ذَكْوَانَ أَبِي صَالِحٍ، عَنْ زَاذَانَ أَبِي عُمَرَ، قَالَ أَتَيْتُ ابْنَ عُمَرَ وَقَدْ أَعْتَقَ مَمْلُوكًا. قَالَ: فَأَخَذَ مِنَ الأَرْضِ عُودًا أَوْ شَيْئًا فَقَالَ: مَا فِيهِ مِنَ الأَجْرِ مَا يَسْوَى هَذَا. إِلاَّ أَنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ لَطَمَ مَمْلُوكَهُ أَوْ ضَرَبَهُ، فَكَفَّارَتُهُ أَنْ يُعْتِقَهُ».

[3763–30]. (Dar al-Salam 4079) Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn al-Muthannā’s text): both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Firās. He said: **‘I heard Dhakwān narrating from Zādhān that Ibn ʿUmar called a slave lad of his, and he saw a mark on his back. He asked him: “Did I hurt you?” He said: “No”. He said: “You are free”. He then took something from the ground and said: “I do**

not earn this thing's weight of reward". I heard God's Messenger (peace be upon him) say: "Whoever beats a lad of his, in punishment he has not deserved, or slaps him, then the expiation for it is to set him free".'

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْـمُثَنَّى) قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ فِرَاسٍ، قَالَ سَمِعْتُ ذَكْوَانَ، يُحَدِّثُ عَنْ زَاذَانَ، أَنَّ ابْنَ عُمَرَ دَعَا بِغُلاَمٍ لَهُ، فَرَأَى بِظَهْرِهِ أَثَرًا، فَقَالَ لَهُ: أَوْجَعْتُكَ؟ قَالَ لا. قَالَ: فَأَنْتَ عَتِيقٌ. قَالَ: ثُمَّ أَخَذَ شَيْئًا مِنَ الأَرْضِ فَقَالَ: مَا لِي فِيهِ مِنَ الأَجْرِ مَا يَزِنُ هَذَا. إِنِّي سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ ضَرَبَ غُلاَمًا لَهُ حَدًّا لَمْ يَأْتِهِ، أَوْ لَطَمَهُ، فَإِنَّ كَفَّارَتَهُ أَنْ يُعْتِقَهُ».

[3764–000]. (Dar al-Salam 4080) Abu Bakr ibn Abi Shaybah narrated: Wakīʿ narrated [H]. Also, Muhammad ibn al-Muthannā narrated to me; ʿAbd al-Raḥmān narrated; both from Sufyān; from Firās; with the chain of transmission of Shuʿbah and Abu ʿAwānah: **the narration by Ibn Mahdī mentions 'in punishment he has not deserved', but in Wakīʿ's narration, he says: 'Whoever slaps his slave', but does not mention punishment.**

وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكِيعٌ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا عَبْدُ الرَّحْمَنِ، كِلاَهُمَا عَنْ سُفْيَانَ، عَنْ فِرَاسٍ، بِإِسْنَادِ شُعْبَةَ وَأَبِي عَوَانَةَ. أَمَّا حَدِيثُ ابْنِ مَهْدِيٍّ فَذَكَرَ فِيهِ: «حَدًّا لَمْ يَأْتِهِ». وَفِي حَدِيثِ وَكِيعٍ: «مَنْ لَطَمَ عَبْدَهُ». وَلَمْ يَذْكُرِ الْحَدَّ.

[3765–31]. (Dar al-Salam 4081) Abu Bakr ibn Abi Shaybah narrated:[ii] ʿAbdullāh ibn Numayr narrated [H]. Ibn Numay narrated (his text); my father narrated; Sufyān narrated; from Salamah ibn Kuhayl; from Muʿāwiyah ibn Suwayd. He said: **'I slapped a slave**

of ours and I disappeared. I then came back, shortly before Ẓuhr. I offered the prayer behind my father. He called the slave and called me. He told him: “Do to him as he has done to you, but he pardoned me.” He [i.e., my father] then said: “We, Muqarrin’s sons, had only one maid during God’s Messenger’s time, and one of us slapped her. It was reported to the Prophet (peace be upon him) and he said: “Set her free”. They said that they had no other servant. He said: “Let them use her as a servant, then when they do not need her they should let her free”.’

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ اللهِ بْنُ نُمَيْرٍ، ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ (وَاللَّفْظُ لَهُ)، حَدَّثَنَا أَبِي، حَدَّثَنَا سُفْيَانُ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ مُعَاوِيَةَ بْنِ سُوَيْدٍ قَالَ: لَطَمْتُ مَوْلًى لَنَا فَهَرَبْتُ، ثُمَّ جِئْتُ قُبَيْلَ الظُّهْرِ فَصَلَّيْتُ خَلْفَ أَبِي، فَدَعَاهُ وَدَعَانِي. ثُمَّ قَالَ امْتَثِلْ مِنْهُ. فَعَفَا. ثُمَّ قَالَ: كُنَّا، بَنِي مُقَرِّنٍ، عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لَيْسَ لَنَا إِلاَّ خَادِمٌ وَاحِدَةٌ، فَلَطَمَهَا أَحَدُنَا. فَبَلَغَ ذَلِكَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «أَعْتِقُوهَا». قَالُوا: لَيْسَ لَهُمْ خَادِمٌ غَيْرُهَا. قَالَ: «فَلْيَسْتَخْدِمُوهَا، فَإِذَا اسْتَغْنَوْا عَنْهَا فَلْيُخَلُّوا سَبِيلَهَا».

[3766–32]. (Dar al-Salam 4082) Abu Bakr ibn Abi Shaybah and Muhammad ibn ʿAbdullāh ibn Numayr narrated (Abu Bakr’s text): both said: Ibn Idrīs narrated; from Ḥuṣayn; from Hilāl ibn Yasāf. He said: **‘In his anger, an old man slapped a maid of his. Suwayd ibn Muqarrin said to him: “You could hit nothing of her other than her fine face! I was the seventh of seven sons of Muqarrin, and we had only one maid to serve us. Our youngest slapped her; so God’s Messenger ordered us to set her free”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ (وَاللَّفْظُ لأَبِي بَكْرٍ) قَالا: حَدَّثَنَا ابْنُ إِدْرِيسَ، عَنْ حُصَيْنٍ، عَنْ هِلاَلِ بْنِ يَسَافٍ قَالَ: عَجِلَ شَيْخٌ فَلَطَمَ خَادِمًا لَهُ، فَقَالَ لَهُ سُوَيْدُ بْنُ مُقَرِّنٍ: عَجَزَ عَلَيْكَ إِلاَّ حُرُّ وَجْهِهَا! لَقَدْ رَأَيْتُنِي سَابِعَ سَبْعَةٍ مِنْ بَنِي مُقَرِّنٍ، مَا لَنَا خَادِمٌ إِلاَّ وَاحِدَةٌ، لَطَمَهَا أَصْغَرُنَا، فَأَمَرَنَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ نُعْتِقَهَا.

[3767–000]. (Dar al-Salam 4083) Muhammad ibn al-Muthannā and Ibn Bashshār narrated: both said: Ibn Abi ʿAdiy narrated; from Shuʿbah; from Ḥuṣayn; from Hilāl ibn Yasāf. He said: **‘We were selling cloth at Suwayd ibn Muqarrin’s home, al-Nuʿmān ibn Muqarrin’s brother. A maid came out, and she said a word to one of us, and he slapped her. Suwayd was angry…’ he added a similar text to Ibn Idrīs’ narration.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ شُعْبَةَ، عَنْ حُصَيْنٍ، عَنْ هِلاَلِ بْنِ يَسَافٍ قَالَ: كُنَّا نَبِيعُ الْبَزَّ فِي دَارِ سُوَيْدِ بْنِ مُقَرِّنٍ، أَخِي النُّعْمَانِ بْنِ مُقَرِّنٍ، فَخَرَجَتْ جَارِيَةٌ فَقَالَتْ لِرَجُلٍ مِنَّا كَلِمَةً، فَلَطَمَهَا. فَغَضِبَ سُوَيْدٌ. فَذَكَرَ نَحْوَ حَدِيثِ ابْنِ إِدْرِيسَ.

[3768–33]. (Dar al-Salam 4084–4085) ʿAbd al-Wārith ibn ʿAbd al-Ṣamad narrated: my father narrated to me; Shuʿbah narrated. He said: **‘Muhammad ibn al-Munkadir said to me: “What is your name?” I said: “Shuʿbah”. Muhammad said: “Abu Shuʿbah al-ʿIrāqī narrated to me from Suwayd ibn Maqarrin that a certain person slapped a maid of his. Suwayd said to him: ‘Do you not know that the face is forbidden to slap? I was one of seven brothers in God’s Messenger’s company. We had only**

one servant. One of us slapped him, and God's Messenger (peace be upon him) ordered us to set him free'."'

وَحَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ، حَدَّثَنِي أَبِي، حَدَّثَنَا شُعْبَةُ قَالَ: قَالَ لِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ: مَا اسْمُكَ؟ قُلْتُ: شُعْبَةُ. فَقَالَ مُحَمَّدٌ: حَدَّثَنِي أَبُو شُعْبَةَ الْعِرَاقِيُّ، عَنْ سُوَيْدِ بْنِ مُقَرِّنٍ، أَنَّ جَارِيَةً لَهُ لَطَمَهَا إِنْسَانٌ. فَقَالَ لَهُ سُوَيْدٌ: أَمَا عَلِمْتَ أَنَّ الصُّورَةَ مُحَرَّمَةٌ؟ فَقَالَ: لَقَدْ رَأَيْتُنِي، وَإِنِّي لَسَابِعُ إِخْوَةٍ لِي، مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. وَمَا لَنَا خَادِمٌ غَيْرُ وَاحِدٍ. فَعَمَدَ أَحَدُنَا فَلَطَمَهُ، فَأَمَرَنَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ نُعْتِقَهُ.

Isḥāq ibn Ibrāhīm and Muhammad ibn al-Muthannā narrated; from Wahb ibn Jarīr; Shuʿbah reported: **'Muhammad ibn al-Munkadir said to me: "What is your name?"' He added the same text as ʿAbd al-Ṣamad's narration.**

وَحَدَّثَنَاهُ إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، عَنْ وَهْبِ بْنِ جَرِيرٍ، أَخْبَرَنَا شُعْبَةُ قَالَ: قَالَ لِي مُحَمَّدُ بْنُ الْمُنْكَدِرِ: مَا اسْمُكَ؟ فَذَكَرَ بِمِثْلِ حَدِيثِ عَبْدِ الصَّمَدِ.

[3769–34]. (Dar al-Salam 4086) Abu Kāmil al-Jaḥdarī narrated:[iii] ʿAbd al-Wāḥid (meaning Ibn Ziyād) narrated; al-Aʿmash narrated; from Ibrāhīm al-Taymī; from his father; he said: Abu Masʿūd al-Badrī said: **'I was whipping a slave of mine when I heard someone behind me say: "Learn, Abu Masʿūd!" In my anger, I did not understand what was said. When he came closer, I realized it was God's Messenger (peace be upon him) and he was saying: "Learn, Abu Masʿūd! Learn, Abu Masʿūd!" I dropped the whip, and he said: "Learn, Abu Masʿūd! God has**

far more power over you than you have over this boy". I said: "I shall never again beat a slave".'

حَدَّثَنَا أَبُو كَامِلٍ الْجَحْدَرِيُّ، حَدَّثَنَا عَبْدُ الْوَاحِدِ (يَعْنِي ابْنَ زِيَادٍ)، حَدَّثَنَا الأَعْمَشُ، عَنْ إِبْرَاهِيمَ التَّيْمِيِّ، عَنْ أَبِيهِ قَالَ: قَالَ أَبُو مَسْعُودٍ الْبَدْرِيُّ: كُنْتُ أَضْرِبُ غُلاَمًا لِي بِالسَّوْطِ، فَسَمِعْتُ صَوْتًا مِنْ خَلْفِي: «اعْلَمْ أَبَا مَسْعُودٍ». فَلَمْ أَفْهَمِ الصَّوْتَ مِنَ الْغَضَبِ. قَالَ: فَلَمَّا دَنَا مِنِّي إِذَا هُوَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَإِذَا هُوَ يَقُولُ: «اعْلَمْ أَبَا مَسْعُودٍ، اعْلَمْ أَبَا مَسْعُودٍ». قَالَ: فَأَلْقَيْتُ السَّوْطَ مِنْ يَدِي. فَقَالَ: «اعْلَمْ أَبَا مَسْعُودٍ، أَنَّ اللهَ أَقْدَرُ عَلَيْكَ مِنْكَ عَلَى هَذَا الْغُلاَمِ». قَالَ: فَقُلْتُ لاَ أَضْرِبُ مَمْلُوكًا بَعْدَهُ أَبَدًا.

[3770 –000]. (Dar al-Salam 4087) Isḥāq ibn Ibrāhīm narrated: Jarīr reported [H]. Also, Zuhayr ibn Ḥarb narrated to me; Muhammad ibn Ḥumayd (who is al-Maʿmarī) narrated; from Sufyān [H]. And, Muhammad ibn Rāfiʿ narrated to me; ʿAbd al-Razzāq narrated; Sufyān reported [H]. Further, Abu Bakr ibn Abi Shaybah narrated; ʿAffān narrated; Abu ʿAwānah narrated; all of them from al-Aʿmash; with the same chain of transmission as ʿAbd al-Wāḥid's: **a similar text; but in Jarīr's narration: 'The whip fell from my hand, in awe of him'.**

وَحَدَّثَنَاهُ إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا جَرِيرٌ، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا مُحَمَّدُ بْنُ حُمَيْدٍ (وَهُوَ الْـمَعْمَرِيُّ)، عَنْ سُفْيَانَ، ح. وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا سُفْيَانُ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَفَّانُ، حَدَّثَنَا أَبُو عَوَانَةَ، كُلُّهُمْ عَنِ الأَعْمَشِ، بِإِسْنَادِ عَبْدِ الْوَاحِدِ: نَحْوَ حَدِيثِهِ. غَيْرَ أَنَّ فِي حَدِيثِ جَرِيرٍ: فَسَقَطَ مِنْ يَدِي السَّوْطُ مِنْ هَيْبَتِهِ.

[3771–35]. (Dar al-Salam 4088) Abu Kurayb Muhammad ibn al-ʿAlā’ narrated: Abu Muʿāwiyah narrated; al-Aʿmash narrated; from Ibrāhīm al-Taymī; from his father; from Abu Masʿūd al-Anṣārī. He said: **‘I was beating a slave of mine when I heard someone behind me saying: “Learn, Abu Masʿūd! God has far more power over you than you have over him”. I turned and saw that it was God’s Messenger (peace be upon him). I said: “Messenger of God, he is free for God’s sake”. He said: “Had you not done [so], the Fire would have scorched you” or “the Fire would have touched you”.’**

وَحَدَّثَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلاَءِ، حَدَّثَنَا أَبُو مُعَاوِيَةَ، حَدَّثَنَا الأَعْمَشُ، عَنْ إِبْرَاهِيمَ التَّيْمِيِّ، عَنْ أَبِيهِ، عَنْ أَبِي مَسْعُودٍ الأَنْصَارِيِّ قَالَ: كُنْتُ أَضْرِبُ غُلاَمًا لِي، فَسَمِعْتُ مِنْ خَلْفِي صَوْتًا: «اعْلَمْ أَبَا مَسْعُودٍ. لَلَّهُ أَقْدَرُ عَلَيْكَ مِنْكَ عَلَيْهِ». فَالْتَفَتُّ، فَإِذَا هُوَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَقُلْتُ: يَا رَسُولَ اللهِ، هُوَ حُرٌّ لِوَجْهِ اللهِ. فَقَالَ: «أَمَا لَوْ لَمْ تَفْعَلْ، لَلَفَحَتْكَ النَّارُ، أَوْ لَمَسَّتْكَ النَّارُ».

[3772–36]. (Dar al-Salam 4089) Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn al-Muthannā’s text): both said: Ibn Abi ʿAdiy narrated; from Shuʿbah; from Sulaymān; from Ibrāhīm al-Taymī; from his father; from Abu Masʿūd; that **‘He was beating his slave, and the lad was saying: ‘I seek refuge with God. But he continued to beat him. The lad said: “I seek refuge with God’s Messenger”, and he stopped. God’s Messenger (peace be upon him) said**: **“By God, God has more power over you than you over him”. He set him free.’**

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْـمُثَنَّى) قَالا: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، عَنْ شُعْبَةَ، عَنْ سُلَيْمَانَ، عَنْ إِبْرَاهِيمَ التَّيْمِيِّ، عَنْ أَبِيهِ، عَنْ أَبِي مَسْعُودٍ أَنَّهُ كَانَ يَضْرِبُ غُلاَمَهُ، فَجَعَلَ يَقُولُ: أَعُوذُ بِاللهِ. قَالَ: فَجَعَلَ يَضْرِبُهُ، فَقَالَ: أَعُوذُ بِرَسُولِ اللهِ. فَتَرَكَهُ، فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَاللهِ، لَلَّهُ أَقْدَرُ عَلَيْكَ مِنْكَ عَلَيْهِ». قَالَ: فَأَعْتَقَهُ.

[3773–000].[iv] Bishr ibn Khālid narrated to me: Muhammad (meaning Ibn Jaʿfar) reported; from Shuʿbah; with the same chain of transmission: **the same text, but did not mention the lad's saying: 'I seek refuge with God. I seek refuge with God's Messenger'.**

وَحَدَّثَنِيهِ بِشْرُ بْنُ خَالِدٍ، أَخْبَرَنَا مُحَمَّدٌ (يَعْنِي ابْنَ جَعْفَرٍ)، عَنْ شُعْبَةَ، بِهَذَا الإِسْنَادِ. وَلَمْ يَذْكُرْ قَوْلَهُ: أَعُوذُ بِاللهِ، أَعُوذُ بِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

Text Explanation

Hadith No. 3762 quotes the Prophet (peace be upon him): 'For anyone who slaps or beats his slave, the expiation is to set that slave free'. Scholars say that this hadith urges good treatment of slaves, kindness and prevention of harm. This message is repeated in all the hadiths in this chapter. All Muslims are in agreement that such setting free is not obligatory, but rather recommended in the hope that it will wipe away the master's sin. Their evidence for saying that it is not obligatory includes hadith No. 3765 narrated by Suwayd ibn Muqarrin which says that when one of the brothers slapped the maid, the Prophet told them to set her free. They said that she was their only servant, and the Prophet said: 'Let them use her as a servant, then when they do not need her they should let her free'.

Qadi ʿIyāḍ said: Scholars are in agreement that nothing that the master does to his servant, such as this light punishment, requires setting the slave free. They differ, however, when this is much and severe, such as a hard thrashing for no valid justification, or punishing the slave with fire, or cutting or damaging a limb or similar disfigurement. Mālik, his disciples and al-Layth say that the slave is set free against the master's will, but he continues to owe allegiance to his master. The ruler must punish the master for what he has done. Other scholars say that the slave is not set free. Mālik's disciples differ regarding a scenario when a master shaves the head of his woman slave or the beard of his slave. Mālik cites in support of his view the hadith narrated by ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ which says that the Prophet set free a slave when his master castrated him. In hadith No. 3763 the Prophet says: 'Whoever beats a lad of his, in punishment he has not deserved, or slaps him, then the expiation for it is to set him free'. This explains the previous hadith, stating that the punishment is meted out unfairly. In this case, the slave has not committed any wrong, and the punishment is not meant as discipline.

Ibn ʿUmar says in hadith No. 3762 that he earns no reward for having set his slave free. He did it because he heard the Prophet say that the expiation for slapping or beating a slave is to set him free. In his regret for having physically punished his slave, Ibn ʿUmar remembered the Prophet's hadith and acted on it, setting that slave free.

In hadith No. 3765 the narrator, Muʿāwiyah ibn Suwayd ibn Muqarrin says: 'I slapped a slave of ours and I disappeared. I then came back, shortly before Ẓuhr. I offered the prayer behind my father. He called the slave and called me. He told him: Do to him as he has done to you, but he pardoned [me]'. This is understood to be a gesture of kindness to the slave by Suwayd, a Companion of the Prophet, because a slap or a similar hurt does not require equal retaliation. It merits a discretionary punishment. Suwayd went further and enabled the slave to take full retaliation. This is an act of kindness showing humility.

Hadith No. 3766 refers to the same story when Suwayd ibn Muqarrin saw a man slapping a maid on her face. He said to him: ‘You could hit nothing of her other than her fine face! I was the seventh of seven sons of Muqarrin, and we had only one maid to serve us. Our youngest slapped her; so God’s Messenger ordered us to set her free’. If the man wanted to discipline his maid, he could have done so without slapping her on the face, which is humiliating. The hadith is understood to mean that all seven brothers agreed to set the slave free, although only one of them was guilty of slapping her. They agreed so that he could atone for his sin.

In hadith No. 3768, Suwayd says to the person who slapped a maid: ‘Do you not know that the face is forbidden to slap?’ This refers to what is clearly stated in another hadith in which the Prophet says: ‘If any of you wants to discipline a slave, he should avoid his face’. This because the face is the most important and appealing of a person’s body. Hurting it is worse than a hurt anywhere else.

Hadith No. 3769 mentions that Abu Masʿūd was whipping his slave. When the Prophet saw him, he said: ‘Learn, Abu Masʿūd! God has far more power over you than you have over him’. The Prophet thus urges kindness to slaves and servants, pardoning their faults. Masters should always restrain themselves and control their anger.

Hadith No. 3772 mentions that ‘Abu Masʿūd was beating his slave, and the lad was saying: I seek refuge with God. But he continued to beat him. The lad said: I seek refuge with God’s Messenger, and he stopped’. Scholars say that perhaps he did not hear the lad’s first appeal for refuge with God as he was in a fit of anger. Nor did he hear the Prophet calling him. Or perhaps when he heard the lad appealing for refuge with God’s Messenger, Abu Masʿūd took notice of the presence of the Prophet (peace be upon him).

Transmission

The chain of transmission of hadith No. 3770 includes the narrator, Muhammad ibn Ḥumayd (who is al-Maʿmarī). He is called al-Maʿmarī because he travelled to meet Maʿmar ibn Rāshid and learn from him. It is also said that he is given this name because he was keen to collect the hadiths narrated by Maʿmar ibn Rāshid.

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i. Related by Abu Dāwūd, 5168.

ii. Related by Abu Dāwūd, 5166 and 5167; al-Tirmidhī, 1542.

iii. Related by al-Tirmidhī, 1948.

iv. In Dar al-Salam's edition, this hadith is attached to the one before it.

CHAPTER 9

ACCUSING A SLAVE OF ADULTERY

[3774–37]. (Dar al-Salam 4090) Abu Bakr ibn Abi Shaybah narrated: Ibn Numayr narrated [H]. Also, Muhammad ibn ʿAbdullāh ibn Numayr narrated; my father narrated; Fuḍayl ibn Ghazwān narrated; he said: I heard ʿAbd al-Raḥmān ibn Abi Nuʿm; Abu Hurayrah narrated to me. He said: **‘Abu al-Qāsim (peace be upon him) said: “Whoever falsely accuses his slave of adultery shall receive the mandatory punishment on the Day of Judgement, unless it is as he says”.’**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا ابْنُ نُمَيْرٍ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا فُضَيْلُ بْنُ غَزْوَانَ قَالَ: سَمِعْتُ عَبْدَ الرَّحْمَنِ بْنَ أَبِي نُعْمٍ، حَدَّثَنِي أَبُو هُرَيْرَةَ قَالَ: قَالَ أَبُو الْقَاسِمِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ قَذَفَ مَمْلُوكَهُ بِالزِّنَا، يُقَامُ عَلَيْهِ الْحَدُّ يَوْمَ الْقِيَامَةِ، إِلاَّ أَنْ يَكُونَ كَمَا قَالَ».

[3775–000]. (Dar al-Salam 4091) Abu Kurayb narrated: Wakīʿ narrated [H]. Also, Zuhayr ibn Ḥarb narrated to me; Isḥāq ibn Yūsuf al-Azraq narrated; both from Fuḍayl ibn Ghazwān; with the same chain of transmission: **the same text, but they said in their narration: ‘I heard Abu al-Qāsim (peace be upon him), the Prophet of repentance’.**

وَحَدَّثَنَاهُ أَبُو كُرَيْبٍ، حَدَّثَنَا وَكِيعٌ، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْحَاقُ بْنُ يُوسُفَ الأَزْرَقُ، كِلاَهُمَا عَنْ فُضَيْلِ بْنِ غَزْوَانَ، بِهَذَا الإِسْنَادِ. وَفِي حَدِيثِهِمَا سَمِعْتُ أَبَا الْقَاسِمِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، نَبِيَّ التَّوْبَةِ.

Text Explanation

This hadith shows that a false accusation of adultery levelled at a slave does not incur the mandatory punishment for this offence in this life. This is agreed upon by all scholars, but such an accuser is served a discretionary punishment. This is so, because a slave is not treated like a married free man. This applies to all slaves, whether a slave is entirely owned, or promised freedom when his master dies, or one who has contracted to buy his own freedom, or a mother-of-child, or a partly owned slave. This is the rule that applies in this life, but on the Day of Judgement, the slave's right against his accuser is given in full, because in the life to come, all mankind are treated equally.

In the second of these two hadiths, the Prophet is described as 'the Prophet of repentance'. This is due to the fact that in his message, repentance is accepted in word and conviction. In past communities, repentance required the offender to kill himself. It is also said that it is possible that 'repentance' in this sense means belief and turning away from unbelief. The Arabic word *tawbah*, which means 'repentance', originally means 'turning back', but in Islamic usage, it acquired the sense of regretting sin.

CHAPTER 10

PROPER TREATMENT FOR SLAVES

[3776–38]. (Dar al-Salam 4092) Abu Bakr ibn Abi Shaybah narrated:[i] Wakīʿ narrated; al-Aʿmash narrated; from al-Maʿrūr ibn Suwayd. He said: **‘We passed by Abu Dharr at al-Rabadhah. He was wearing a striped garment and his slave a similar garment. We said: Abu Dharr, had you taken both garments, you would have had a suit. He said: Once I had a conflict with one of my brethren, whose mother was non-Arab. I insulted him on account of his mother. He complained to the Prophet (peace be upon him). When I met the Prophet he said to me: “Abu Dharr, you are a man with manners [of the days] of ignorance”. I said: “Messenger of God, when someone abuses others, they abuse his father and mother”. He said: “Abu Dharr, you are a man with manners [of the days] of ignorance. They are your brothers, but God has placed them under you: feed them as you eat and clothe them as you wear. Do not overburden them with what is too hard for them; but if you do, then help them”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا وَكِيعٌ، حَدَّثَنَا الأَعْمَشُ، عَنِ الْـمَعْرُورِ بْنِ سُوَيْدٍ قَالَ: مَرَرْنَا بِأَبِي ذَرٍّ بِالرَّبَذَةِ، وَعَلَيْهِ بُرْدٌ، وَعَلَى غُلاَمِهِ مِثْلُهُ. فَقُلْنَا: يَا أَبَا ذَرٍّ، لَوْ جَمَعْتَ بَيْنَهُمَا كَانَتْ حُلَّةً. فَقَالَ: إِنَّهُ كَانَ بَيْنِي وَبَيْنَ رَجُلٍ مِنْ إِخْوَانِي كَلاَمٌ. وَكَانَتْ أُمُّهُ أَعْجَمِيَّةً، فَعَيَّرْتُهُ بِأُمِّهِ، فَشَكَانِي إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَلَقِيتُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: «يَا

أَبَا ذَرٍّ، إِنَّكَ امْرُؤٌ فِيكَ جَاهِلِيَّةٌ». قُلْتُ: يَا رَسُولَ اللهِ مَنْ سَبَّ الرِّجَالَ سَبُّوا أَبَاهُ وَأُمَّهُ. قَالَ: «يَا أَبَا ذَرٍّ، إِنَّكَ امْرُؤٌ فِيكَ جَاهِلِيَّةٌ. هُمْ إِخْوَانُكُمْ، جَعَلَهُمُ اللهُ تَحْتَ أَيْدِيكُمْ. فَأَطْعِمُوهُمْ مِمَّا تَأْكُلُونَ، وَأَلْبِسُوهُمْ مِمَّا تَلْبَسُونَ. وَلاَ تُكَلِّفُوهُمْ مَا يَغْلِبُهُمْ، فَإِنْ كَلَّفْتُمُوهُمْ فَأَعِينُوهُمْ».

[3777–39]. (Dar al-Salam 4093) Ahmad ibn Yūnus narrated: Zuhayr narrated [H]. Also, Abu Kurayb narrated; Abu Muʿāwiyah narrated [H]. And, Isḥāq ibn Ibrāhīm narrated; ʿĪsā ibn Yūnus reported; all from al-Aʿmash; with the same chain of transmission: **the same text. However, in their narrations, Zuhayr and Abu Muʿāwiyah add after the Prophet's words 'You are a man with manners of the days of ignorance': He said: 'I said: "At this old age of mine?" He said: "Yes".' And in Abu Muʿāwiyah's narration: 'Yes, at this old age of yours'. And in ʿĪsā's narration: 'If he overburdens him, he should sell him', while in Zuhayr's narration: 'he should help him with it'. Abu Muʿāwiyah's narration does not mention either he should sell him or help him. It stops at 'Do not overburden them with what is too hard for them'.**

وَحَدَّثَنَاهُ أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، ح. وَحَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا أَبُو مُعَاوِيَةَ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، كُلُّهُمْ عَنِ الأَعْمَشِ، بِهَذَا الإِسْنَادِ. وَزَادَ فِي حَدِيثِ زُهَيْرٍ وَأَبِي مُعَاوِيَةَ بَعْدَ قَوْلِهِ «إِنَّكَ امْرُؤٌ فِيكَ جَاهِلِيَّةٌ». قَالَ: قُلْتُ عَلَى حَالِ سَاعَتِي مِنَ الْكِبَرِ؟ قَالَ: «نَعَمْ». وَفِي رِوَايَةِ أَبِي مُعَاوِيَةَ: «نَعَمْ، عَلَى حَالِ سَاعَتِكَ مِنَ الْكِبَرِ». وَفِي حَدِيثِ عِيسَى: «فَإِنْ كَلَّفَهُ مَا يَغْلِبُهُ فَلْيَبِعْهُ». وَفِي حَدِيثِ زُهَيْرٍ: «فَلْيُعِنْهُ عَلَيْهِ». وَلَيْسَ فِي حَدِيثِ أَبِي مُعَاوِيَةَ: «فَلْيَبِعْهُ». وَلا «فَلْيُعِنْهُ». انْتَهَى عِنْدَ قَوْلِهِ: «وَلا يُكَلِّفْهُ مَا يَغْلِبُهُ».

[3778–40]. (Dar al-Salam 4094) Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn al-Muthannā's text): both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Wāṣil al-Aḥdab; from al-Maʿrūr ibn Suwayd. He said: **'I passed by Abu Dharr and he was wearing a suit and his slave a similar suit. I asked him about this and he mentioned that he quarrelled with a man during the Prophet's lifetime and insulted him on account of his mother. The man went to the Prophet and told him. The Prophet (peace be upon him) said [to Abu Dharr]: "You are a man with manners [of the days] of ignorance. They are your brothers and God's gift, and God has placed them under you. Whoever has a brother under him should feed him as he himself eats and clothe him as he wears. Do not overburden them with what is too hard for them; but if you do, then help them".'**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْـمُثَنَّى) قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ وَاصِلٍ الأَحْدَبِ، عَنِ الْـمَعْرُورِ بْنِ سُوَيْدٍ قَالَ: رَأَيْتُ أَبَا ذَرٍّ وَعَلَيْهِ حُلَّةٌ، وَعَلَى غُلاَمِهِ مِثْلُهَا. فَسَأَلْتُهُ عَنْ ذَلِكَ، قَالَ: فَذَكَرَ أَنَّهُ سَابَّ رَجُلاً عَلَى عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَعَيَّرَهُ بِأُمِّهِ. قَالَ: فَأَتَى الرَّجُلُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّكَ امْرُؤٌ فِيكَ جَاهِلِيَّةٌ. إِخْوَانُكُمْ وَخَوَلُكُمْ جَعَلَهُمُ اللهُ تَحْتَ أَيْدِيكُمْ. فَمَنْ كَانَ أَخُوهُ تَحْتَ يَدَيْهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ، وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ. وَلاَ تُكَلِّفُوهُمْ مَا يَغْلِبُهُمْ. فَإِنْ كَلَّفْتُمُوهُمْ فَأَعِينُوهُمْ عَلَيْهِ».

[3779–41]. (Dar al-Salam 4095) Abu al-Ṭāhir Ahmad ibn ʿAmr ibn Sarḥ narrated to me: Ibn Wahb reported; ʿAmr ibn al-Ḥārith reported; that Bukayr ibn al-Ashajj narrated to him; from al-ʿAjlān

Fāṭimah’s *mawlā*; from Abu Hurayrah; from God’s Messenger (peace be upon him); that he said: **‘A slave is entitled to his food and clothing, and that he is not assigned tasks that are beyond his ability’.**

وَحَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ سَرْحٍ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنَا عَمْرُو بْنُ الْحَارِثِ، أَنَّ بُكَيْرَ بْنَ الأَشَجِّ، حَدَّثَهُ عَنِ الْعَجْلاَنِ، مَوْلَى فَاطِمَةَ، عَنْ أَبِي هُرَيْرَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «لِلْمَمْلُوكِ طَعَامُهُ وَكِسْوَتُهُ. وَلاَ يُكَلَّفُ مِنَ الْعَمَلِ إِلاَّ مَا يُطِيقُ».

[3780–42]. (Dar al-Salam 4096) Al-Qaʿnabī narrated:[ii] Dāwūd ibn Qays narrated; from Mūsā ibn Yasār; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “If your servant has prepared your food and served it to you, having endured its heat and smoke, let him sit with you to eat. If the food is small in quantity, put a morsel or two of it in the servant’s hand”.’**

Dāwūd said: **‘meaning a bite or two’.**

وَحَدَّثَنَا الْقَعْنَبِيُّ، حَدَّثَنَا دَاوُدُ بْنُ قَيْسٍ، عَنْ مُوسَى بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِذَا صَنَعَ لأَحَدِكُمْ خَادِمُهُ طَعَامَهُ ثُمَّ جَاءَهُ بِهِ، وَقَدْ وَلِيَ حَرَّهُ وَدُخَانَهُ، فَلْيُقْعِدْهُ مَعَهُ فَلْيَأْكُلْ. فَإِنْ كَانَ الطَّعَامُ مَشْفُوهًا قَلِيلاً، فَلْيَضَعْ فِي يَدِهِ مِنْهُ أُكْلَةً أَوْ أُكْلَتَيْنِ».

قَالَ دَاوُدُ: يَعْنِي لُقْمَةً أَوْ لُقْمَتَيْنِ.

Text Explanation

In hadith No. 3776 the suggestion is put to Abu Dharr that he should have taken both garments, as they were of the same type, so that he would have a suit, a term that refers in Arabic to an attire of two pieces. In this hadith, Abu Dharr explains: 'Once I had a conflict with one of my brethren, whose mother was non-Arab. I insulted him on account of his mother. He complained to the Prophet (peace be upon him). When I met the Prophet he said to me: "Abu Dharr, you are a man with manners [of the days] of ignorance". Abu Dharr's words, 'one of my brethren', means a Muslim person, who seems to have been a slave. He refers to him as a 'brother' because the Prophet said to him: 'They are your brethren and God's gift… Whoever has a brother under him…'.

The Prophet said to Abu Dharr: 'You are a man with manners [of the days] of ignorance'. This means that the insult levelled by Abu Dharr at that man belongs to the manners and standards of the people of ignorance. A Muslim must not have any aspect of such manners or moral values. Thus, the hadith prohibits insults on account of a person's parentage, because this belongs to the manners that prevailed in pre-Islamic days of ignorance.

Abu Dharr offered his excuse saying that the other man had abused him, and it was normal when one is abused to return it by abusing the parents of the other person. The Prophet rejects this and describes it as part of the manners and morality of ignorance. An insulted person may return the insult to the one who abused him, but he must not abuse his father or mother.

The Prophet added: 'They are your brothers, but God has placed them under you: feed them as you eat and clothe them as you wear. Do not overburden them with what is too hard for them; but if you do, then help them'. The first sentence refers to slaves. The Prophet orders that they are fed and clothed of the same type the master eats and wears. This is understood by all Muslims as a recommendation, not a duty. That Abu Dharr did it in practice shows that he preferred to do what was recommended. What is required of a master is to give a slave a reasonable

standard of living, whether it is of the same standard the master normally has, or better or worse. If the master's hand is tight with his own expenses, giving himself less than what other people of similar social status do, either out of disregard to material luxury or out of stinginess, he cannot impose the same on his slave unless the slave agrees.

Scholars agree that it is not permissible to overburden a slave with tasks that are beyond his ability, and if such tasks are assigned, then the master must help the slave, either by himself or by providing others to help.

In hadith No. 3777, the Prophet says that if the master overburdens his slave, 'he should sell him', or 'he should help him with it'. The second version is the correct one because it is consistent with the other hadiths. It is said that the other person involved in this case was Bilāl.

Hadith No. 3779 states: 'A slave is entitled to his food and clothing, and that he is not assigned tasks that are beyond his ability'. This is consistent with the hadith related to Abu Dharr's case. The Prophet mentions food and clothing to alert us to all that a slave needs for living, but God knows best.

Hadith No. 3780 quotes the Prophet: 'If your servant has prepared your food and served it to you, having endured its heat and smoke, let him sit with you to eat. If the food is small in quantity, put a mosel or two of it in the servant's hand'. Dāwūd said: 'meaning a bite or two'. The hadith urges people to observe good manners and high values, particularly giving the person who prepares the food or serves it a portion of it. He has endured the task of preparing it, with what this may involve of heat and smoke, in addition to smelling it as it cooks and becomes ready. All these requirements are understood to be recommended, rather than obligatory.

i. Related by al-Bukhari, 30, 2545 and 6050; Abu Dāwūd, 5157 and 5158; al-Tirmidhī, 1946; Ibn Mājah in a shorter version, 3690.

ii. Related by Abu Dāwūd, 3846.

CHAPTER 11

A SLAVE'S REWARD

[3781–43]. (Dar al-Salam 4097–4098) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **'God's Messenger (peace be upon him) said: "If a slave serves his master sincerely and worships God well, he shall have double reward".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ « إِنَّ الْعَبْدَ إِذَا نَصَحَ لِسَيِّدِهِ وَأَحْسَنَ عِبَادَةَ اللهِ فَلَهُ أَجْرُهُ مَرَّتَيْنِ

Zuhayr ibn Ḥarb and Muhammad ibn al-Muthannā narrated to me: both said: Yaḥyā (who is al-Qaṭṭān) narrated [H]. Also, Ibn Numayr narrated; my father narrated [H]. And, Abu Bakr ibn Abi Shaybah narrated, Ibn Numayr, and Abu Usāmah narrated; all from ʿUbaydullāh [H]. Further, Ḥārūn ibn Saʿīd al-Aylī narrated; Ibn Wahb narrated; Usāmah narrated to me; all from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him): **the same text as Mālik's narration.**

وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالا حَدَّثَنَا يَحْيَى (وَهْوَ الْقَطَّانُ) ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا ابْنُ نُمَيْرٍ، وَأَبُو أُسَامَةَ، كُلُّهُمْ

عَنْ عُبَيْدِ اللهِ، ح. وَحَدَّثَنَا هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، حَدَّثَنَا ابْنُ وَهْبٍ، حَدَّثَنِي أُسَامَةُ، جَمِيعًا عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِ حَدِيثِ مَالِكٍ.

[3782–44]. (Dar al-Salam 4099) Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me:[ii] both said: Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb. He said: I heard Saʿīd ibn al-Musayyib say: Abu Hurayrah said: **‘God’s Messenger (peace be upon him) said: “A slave in bondage who is good and diligent has double reward”. By Him who holds Abu Hurayrah’s soul in His hand, had it not been for striving for God’s cause, the hajj and dutifulness to my mother, I would have loved to die a slave. He said: “We have learnt that Abu Hurayrah did not perform the hajj until his mother died, so that he remained with her”.’**

Abu al-Ṭāhir said in his narration: **‘A slave who is good and diligent’, without mentioning ‘in bondage’.**

حَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ قَالَ: سَمِعْتُ سَعِيدَ بْنَ الْمُسَيَّبِ يَقُولُ: قَالَ أَبُو هُرَيْرَةَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لِلْعَبْدِ الْمَمْلُوكِ الْمُصْلِحِ أَجْرَانِ». وَالَّذِي نَفْسُ أَبِي هُرَيْرَةَ بِيَدِهِ، لَوْلاَ الْجِهَادُ فِي سَبِيلِ اللهِ، وَالْحَجُّ، وَبِرُّ أُمِّي، لأَحْبَبْتُ أَنْ أَمُوتَ وَأَنَا مَمْلُوكٌ. قَالَ: وَبَلَغَنَا أَنَّ أَبَا هُرَيْرَةَ لَمْ يَكُنْ يَحُجُّ حَتَّى مَاتَتْ أُمُّهُ لِصُحْبَتِهَا. قَالَ أَبُو الطَّاهِرِ فِي حَدِيثِهِ «لِلْعَبْدِ الْمُصْلِحِ». وَلَمْ يَذْكُرِ الْمَمْلُوكَ.

[3783–000].[iii] Zuhayr ibn Ḥarb narrated to me: Abu Ṣafwān al-Umawī narrated; Yūnus reported to me; from Ibn Shihāb; with the same chain of transmission: **the same text, but did not mention the portion from, ‘we have learnt,’ to the end.**

وَحَدَّثَنِيهِ زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا أَبُو صَفْوَانَ الأُمَوِيُّ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، بِهَذَا الإِسْنَادِ. وَلَمْ يَذْكُرْ: بَلَغَنَا، وَمَا بَعْدَهُ.

[3784–45]. (Dar al-Salam 4100) Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated: both said: Abu Muʿāwiyah narrated; from al-Aʿmash; from Abu Ṣāliḥ; from Abu Hurayrah. He said**: 'God's Messenger (peace be upon him) said: "If a slave fulfils his duty towards God and towards his masters, he will have a double reward". I narrated this to Kaʿb and Kaʿb said: "He has no accountability, and the same is the case of a believer with scanty resources".'**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ قَالا: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِذَا أَدَّى الْعَبْدُ حَقَّ اللهِ، وَحَقَّ مَوَالِيهِ، كَانَ لَهُ أَجْرَانِ». قَالَ: فَحَدَّثْتُهَا كَعْبًا، فَقَالَ كَعْبٌ: لَيْسَ عَلَيْهِ حِسَابٌ، وَلاَ عَلَى مُؤْمِنٍ مُزْهِدٍ.

Zuhayr ibn Ḥarb narrated; Jarīr narrated; from al-Aʿmash; with the same chain of transmission: **the same text.**

وَحَدَّثَنِيهِ زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا جَرِيرٌ، عَنِ الأَعْمَشِ، بِهَذَا الإِسْنَادِ.

[3785–46]. (Dar al-Salam 4101) Muhammad ibn Rāfiʿ narrated: ʿAbd al-Razzāq narrated; Maʿmar narrated; from Hammām ibn Munabbih. He said: This is what Abu Hurayrah narrated to us from God's Messenger (peace be upon him), mentioning a number of hadiths, including**: 'God's Messenger (peace be upon him) said:**

“It is fine for a slave to die, having worshipped God well and having been good to his master; it is fine for him”.’

وَحَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، حَدَّثَنَا مَعْمَرٌ، عَنْ هَمَّامِ بْنِ مُنَبِّهٍ قَالَ: هَذَا مَا حَدَّثَنَا أَبُو هُرَيْرَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ أَحَادِيثَ مِنْهَا وَقَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «نِعِمَّا لِلْمَمْلُوكِ أَنْ يُتَوَفَّى يُحْسِنُ عِبَادَةَ اللهِ، وَصَحَابَةَ سَيِّدِهِ. نِعِمَّا لَهُ».

Text Explanation

The hadiths in this chapter highlight the good prospect for a slave who is diligent in the fulfilment of his duty towards his master, doing what serves his best interests, and who fulfils his duty of worship. He receives double reward because he fulfils both duties, in addition to being in a weak position as a slave. In hadith No. 3782, Abu Hurayrah says: ‘Had it not been for striving for God’s cause, the hajj and dutifulness to my mother, I would have loved to die a slave’. This because the duties of jihad and hajj do not apply to a slave because he does not fulfil the condition of ability. He also mentions dutifulness to his mother, which means looking after her and paying her living expenses and serving her in whatever she needs. A slave may not be able to do this.

The hadith adds: ‘We have learnt that Abu Hurayrah did not perform the hajj until his mother died, so that he remained with her’. This refers to the voluntary hajj. Abu Hurayrah performed the obligatory hajj during the Prophet’s lifetime. His statement means that he considered dutifulness to his mother to take higher priority than voluntary hajj, because dutifulness to parents is obligatory, which takes precedence ahead of what is voluntary. According to our Shāfiʿī School and the Mālikī School, a father or a mother

may order their child not to do a voluntary hajj, but cannot do so in respect of the obligatory hajj.

Hadith No. 3784 says: ‘If a slave fulfils his duty towards God and towards his masters, he will have a double reward’. I narrated this to Kaʿb and Kaʿb said: ‘He has no accountability, and the same is the case of a believer with scanty resources’. This is because of his plentiful reward and little sin. Kaʿb said this either on the basis of having learnt it from the Prophet, or from his personal scholarly reasoning, because a person whose good deeds are preponderant and receives his record in his right hand will have an easy accountability and will be in delight as he goes to join his people.

i. Related by al-Bukhari, 2546; Abu Dāwūd, 5169.

ii. Related by al-Bukhari, 2548.

iii. In Dar al-Salam’s edition, this hadith is attached to the one before it.

CHAPTER 12

FREEING ONE'S SHARE IN A SLAVE

[3786–47]. (Dar al-Salam 4102) Yaḥyā ibn Yaḥyā narrated: he said: I said to Mālik: Did Nāfiʿ narrate to you; from Ibn ʿUmar that **'God's Messenger (peace be upon him) said: "If a person sets free his share in a slave and he has an amount of money equal to the full price of that slave, the slave is valued against him in equity. He gives his partners [in the slave] the value of their shares and the slave would be wholly freed by him. Otherwise, he has freed the share he had".'**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى قَالَ: قُلْتُ لِمَالِكٍ: حَدَّثَكَ نَافِعٌ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ، فَكَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَ الْعَبْدِ، قُوِّمَ عَلَيْهِ قِيمَةَ الْعَدْلِ، فَأَعْطَى شُرَكَاءَهُ حِصَصَهُمْ، وَعَتَقَ عَلَيْهِ الْعَبْدُ. وَإِلاَّ فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ».

[3787–48]. (Dar al-Salam 4103) Ibn Numayr narrated: my father narrated; ʿUbaydullāh narrated; from Nāfiʿ; from Ibn ʿUmar. He said: **'God's Messenger (peace be upon him) said: "Whoever sets free his share in a slave is bound to set the whole slave free, if he has enough money equal to the price of the slave. If he does not have the money, the share he has set free becomes free".'**

حَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَعْتَقَ شِرْكًا لَهُ مِنْ مَمْلُوكٍ، فَعَلَيْهِ عِتْقُهُ كُلُّهُ، إِنْ كَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَهُ. فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ عَتَقَ مِنْهُ مَا عَتَقَ».

[3788–49]. (Dar al-Salam 4104) Shaybān ibn Farrūkh narrated: Jarīr ibn Ḥāzim narrated; from Nāfiʿ, ʿAbdullāh ibn ʿUmar's *mawlā*; from ʿAbdullāh ibn ʿUmar. He said: **'God's Messenger (peace be upon him) said: "If a person sets free his share in a slave and he has an amount of money equal to the full price of that slave, the slave is valued against him in equity. Otherwise, he has freed the share he had".'**

وَحَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا جَرِيرُ بْنُ حَازِمٍ، عَنْ نَافِعٍ مَوْلَى عَبْدِ اللهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَعْتَقَ نَصِيبًا لَهُ فِي عَبْدٍ، فَكَانَ لَهُ مِنَ الْـمَالِ قَدْرُ مَا يَبْلُغُ قِيمَتَهُ قُوِّمَ عَلَيْهِ قِيمَةَ عَدْلٍ. وَإِلاَّ فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ».

[3789–000]. (Dar al-Salam 4105) Qutaybah ibn Saʿīd and Muhammad ibn Rumḥ narrated the same: both from al-Layth ibn Saʿd [H]. Also, Muhammad ibn al-Muthannā narrated; ʿAbd al-Wahhāb narrated; he said: I heard Yaḥyā ibn Saʿīd [H]. Also, Shaybān ibn Farrūkh narrated; Jarīr ibn Ḥāzim narrated [H]. And, Abu al-Rabīʿ and Abu Kāmil narrated; both said: Ḥammād (who is Ibn Zayd) narrated [H]. Further, Zuhayr ibn Ḥarb narrated to me; Ismāʿīl (meaning Ibn ʿUlayyah) narrated; both from Ayyūb [H]. Further, Ibn Numayr narrated; my father narrated; ʿUbaydullāh narrated [H]. And, Isḥāq ibn Manṣūr narrated to me; ʿAbd al-Razzāq reported; from Ibn Jurayj; Ismāʿīl ibn Umayyah reported to

me [H]. Also, Muhammad ibn Rāfiʿ narrated; Ibn Abi Fudayk narrated; from Ibn Abi Dhi'b [H]. Further, Ḥārūn ibn Saʿīd al-Aylī narrated; Ibn Wahb narrated; Usāmah (meaning Ibn Zayd) reported to me: all of these from Nāfiʿ; from Ibn ʿUmar: **the same narration from the Prophet (peace be upon him). Their narrations do not include: 'Otherwise, he has freed the share he had', except in the narrations of Ayyūb and Yaḥyā ibn Saʿīd who mention this in the hadith. However, they said: 'We are not sure whether it belongs in the hadith or it is something Nāfiʿ said'. None says in his narration: 'I heard God's Messenger (peace be upon him) say' except in the narration of al-Layth ibn Saʿd.**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَمُحَمَّدُ بْنُ رُمْحٍ، عَنِ اللَّيْثِ بْنِ سَعْدٍ، ح. وَحَدَّثَنَا مُحَمَّدُ، بْنُ الْمُثَنَّى حَدَّثَنَا عَبْدُ الْوَهَّابِ قَالَ: سَمِعْتُ يَحْيَى بْنَ سَعِيدٍ، ح. وَحَدَّثَنِي أَبُو الرَّبِيعِ، وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ (وَهُوَ ابْنُ زَيْدٍ) ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ (يَعْنِي ابْنَ عُلَيَّةَ)، كِلاَهُمَا عَنْ أَيُّوبَ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، عَنِ ابْنِ جُرَيْجٍ، أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ، ح وَحَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ، عَنِ ابْنِ أَبِي ذِئْبٍ، ح. وَحَدَّثَنَا هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، أَخْبَرَنَا ابْنُ وَهْبٍ، قَالَ أَخْبَرَنِي أُسَامَةُ، (يَعْنِي ابْنَ زَيْدٍ): كُلُّ هَؤُلاَءِ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِهَذَا الْحَدِيثِ. وَلَيْسَ فِي حَدِيثِهِمْ: «وَإِنْ لَمْ يَكُنْ لَهُ مَالٌ، فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ». إِلاَّ فِي حَدِيثِ أَيُّوبَ وَيَحْيَى بْنِ سَعِيدٍ، فَإِنَّهُمَا ذَكَرَا هَذَا الْحَرْفَ فِي الْحَدِيثِ، وَقَالا: لاَ نَدْرِي أَهُوَ شَيْءٌ فِي الْحَدِيثِ، أَوْ قَالَهُ نَافِعٌ مِنْ قِبَلِهِ. وَلَيْسَ فِي رِوَايَةِ أَحَدٍ مِنْهُمْ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، إِلاَّ فِي حَدِيثِ اللَّيْثِ بْنِ سَعْدٍ.

[3790–50]. (Dar al-Salam 4106) ʿAmr al-Nāqid and Ibn Abi ʿUmar narrated:[i] both from Ibn ʿUyaynah; Ibn Abi ʿUmar said: Sufyān ibn ʿUyaynah narrated; from ʿAmr; from Sālim ibn ʿAbdullāh; from his father; that **‘God’s Messenger (peace be upon him) said: “Whoever sets free a slave he owns with a partner, the slave is valued against him in equity, neither cheating nor going too far, then the slave is freed in total at his expense if he is in money”.’**

وَحَدَّثَنَا عَمْرٌو النَّاقِدُ، وَابْنُ أَبِي عُمَرَ، كِلاَهُمَا عَنِ ابْنِ عُيَيْنَةَ. قَالَ ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرٍو، عَنْ سَالِمِ بْنِ عَبْدِ اللهِ، عَنْ أَبِيهِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ أَعْتَقَ عَبْدًا بَيْنَهُ وَبَيْنَ آخَرَ، قُوِّمَ عَلَيْهِ فِي مَالِهِ قِيمَةَ عَدْلٍ. لا وَكْسَ وَلا شَطَطَ. ثُمَّ عَتَقَ عَلَيْهِ فِي مَالِهِ إِنْ كَانَ مُوسِرًا».

[3791–51]. (Dar al-Salam 4107) ʿAbd ibn Ḥumayd narrated:[ii] ʿAbd al-Razzāq narrated; Maʿmar reported; from al-Zuhrī; from Sālim; from Ibn ʿUmar; that the Prophet (peace be upon him) said: **‘Whoever sets free his share in a slave the remaining share is also set free at his expense if he has money equal to the slave’s price’.**

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ عَتَقَ مَا بَقِيَ فِي مَالِهِ، إِذَا كَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَ الْعَبْدِ».

[3792–52]. (Dar al-Salam 4108) Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn al-Muthannā’s text): both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Qatādah;

from al-Naḍr ibn Anas; from Bashīr ibn Nahīk; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **‘about a slave owned by two people, but one of them sets his share free. The Prophet said: “He guarantees”.’**

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَمُحَمَّدُ بْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْمُثَنَّى) قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهِيكٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. قَالَ فِي الْمَمْلُوكِ بَيْنَ الرَّجُلَيْنِ فَيُعْتِقُ أَحَدُهُمَا قَالَ: «يَضْمَنُ».

[3793–53]. (Dar al-Salam 4109) ʿUbaydullāh ibn Muʿādh narrated: my father narrated; Shuʿbah narrated; with the same chain of transmission. He said: **‘If a person sets free a share in a slave, the slave is set free at his expense’.**

وَحَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ، بِهَذَا الإِسْنَادِ. قَالَ: «مَنْ أَعْتَقَ شَقِيصًا مِنْ مَمْلُوكٍ فَهُوَ حُرٌّ مِنْ مَالِهِ».

[3794–54]. (Dar al-Salam 4110) ʿAmr al-Nāqid narrated to me: Ismāʿīl ibn Ibrāhīm narrated; from Ibn Abi ʿArūbah; from Qatādah; from al-Naḍr ibn Anas; from Bashīr ibn Nahīk; from Abu Hurayrah; from the Prophet (peace be upon him). He said: **‘Whoever frees a share he owns in a slave, the freedom of the remainder is paid by him if he has the money. If he does not, the slave may work without being hard pressed’.**

وَحَدَّثَنِي عَمْرٌو النَّاقِدُ، حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، عَنِ ابْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهِيكٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ أَعْتَقَ شَقِيصًا لَهُ فِي عَبْدٍ، فَخَلاَصُهُ فِي مَالِهِ إِنْ كَانَ لَهُ مَالٌ. فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ».

[3795–55]. (Dar al-Salam 4111) Abu Bakr ibn Abi Shaybah narrated: ʿAlī ibn Mushir and Muhammad ibn Bishr narrated [H]. Isḥāq ibn Ibrāhīm and ʿAlī ibn Khashram narrated: both said: ʿĪsā ibn Yūnus reported; all from Saʿīd ibn Abi ʿArūbah; with the same chain of transmission: **the same text, but in ʿĪsā's narration: 'then he is required to work, without being hard pressed, to raise the price of the share of the one who has not freed him'.**

وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، وَمُحَمَّدُ بْنُ بِشْرٍ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَلِيُّ بْنُ خَشْرَمٍ، قَالا: أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، جَمِيعًا عَنِ ابْنِ أَبِي عَرُوبَةَ، بِهَذَا الإِسْنَادِ. وَفِي حَدِيثِ عِيسَى: «ثُمَّ يُسْتَسْعَى فِي نَصِيبِ الَّذِي لَمْ يُعْتِقْ، غَيْرَ مَشْقُوقٍ عَلَيْهِ».

[3796–56]. (Dar al-Salam 4112) ʿAlī ibn Ḥujr al-Saʿdī, Abu Bakr ibn Abi Shaybah and Zuhayr ibn Ḥarb narrated:[iii] they said: Ismāʿīl (who is Ibn ʿUlayyah) narrated; from Ayyūb; from Abu Qilābah; from Abu al-Muhallab; from ʿImrān ibn Ḥuṣayn that **'A man set free six slaves he owned just before his death, and he had no property other than these. God's Messenger (peace be upon him) called them, and he divided them into three parts and drew lots between them, setting two of them free and keeping the other four slaves. He said some stern words about the man'.**

حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ السَّعْدِيُّ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ قَالُوا: حَدَّثَنَا إِسْمَاعِيلُ (وَهُوَ ابْنُ عُلَيَّةَ)، عَنْ أَيُّوبَ، عَنْ أَبِي قِلاَبَةَ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ. أَنَّ رَجُلاً أَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَهُ عِنْدَ مَوْتِهِ، لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ. فَدَعَا بِهِمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَجَزَّأَهُمْ أَثْلاَثًا. ثُمَّ أَقْرَعَ بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً، وَقَالَ لَهُ قَوْلاً شَدِيدًا.

[3797–57]. (Dar al-Salam 4113–4114) Qutaybah ibn Saʿīd narrated: Ḥammād narrated [H]. Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated; from al-Thaqafī; both from Ayyūb; with the same chain of transmission: **Ḥammād's narration is the same as Ibn ʿUlayyah's. But al-Thaqafī's narration says: 'A man from the Anṣār made a will to set six slaves free at his death'.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا حَمَّادٌ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ، عَنِ الثَّقَفِيِّ، كِلاَهُمَا عَنْ أَيُّوبَ، بِهَذَا الإِسْنَادِ. أَمَّا حَمَّادٌ فَحَدِيثُهُ كَرِوَايَةِ ابْنِ عُلَيَّةَ، وَأَمَّا الثَّقَفِيُّ فَفِي حَدِيثِهِ أَنَّ رَجُلاً مِنَ الأَنْصَارِ أَوْصَى عِنْدَ مَوْتِهِ، فَأَعْتَقَ سِتَّةَ مَمْلُوكِينَ.

Muhammad ibn Minhāl al-Ḍarīr and Ahmad ibn ʿAbdah narrated:[iv] both said: Yazīd ibn Zurayʿ narrated; Hishām ibn Ḥassān narrated; from Muhammad ibn Sīrīn; from ʿImrān ibn Ḥuṣayn; from the Prophet (peace be upon him): **the same text as the narration by Ibn ʿUlayyah and Ḥammād.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ مِنْهَالٍ الضَّرِيرُ، وَأَحْمَدُ بْنُ عَبْدَةَ، قَالا: حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، حَدَّثَنَا هِشَامُ بْنُ حَسَّانَ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِ حَدِيثِ ابْنِ عُلَيَّةَ وَحَمَّادٍ.

Text Explanation

The hadiths in this chapter, up to No. 3795, were entered by Muslim in the Book of Freeing Slaves. It is amazing that Muslim unnecessarily repeats them at this point, which is contrary to his normal method. We explained them fully at that point. The Prophet says in these hadiths that when a slave is owned jointly by two or more people and one of them sets his share free, the slave is set free in full, with the full price coming out of the funds of that partner who freed his share, after the slave is valued 'in equity, neither cheating nor going too far'. In other words, the value is determined fairly, without being unfair to any of the partners.

Hadith No. 3796 mentions that 'A man set free six slaves he owned just before his death, and he had no property other than these. God's Messenger (peace be upon him) called them, and he divided them into three parts and drew lots between them, setting two of them free and keeping the other four slaves. He said some stern words about the man'. In the other version, No. 3797, 'A man from the Anṣār made a will to set six slaves free at his death'. That the Prophet said 'stern words' about the man indicates his strong disapproval of his action and to warn others against doing the same.[v] A different hadith mentions what the Prophet's stern words were. He is quoted to have said: 'Had we known, we would not have offered the funeral prayer for him'. This is understood to mean that the Prophet himself would not have offered this prayer, but his Companions would have offered it, because it is not permissible for the Muslim community to omit offering the funeral prayer for a deceased Muslim.

This hadith provides evidence in support of the view of Mālik, al-Shāfiʿī, Ahmad, Isḥāq, Dāwūd, Ibn Jarīr and the majority of scholars confirming the use of drawing lots when freeing slaves and some similar matters. This means that if, in his final illness, a person frees a certain number of slaves or makes a will to this effect, and they represent less than one-third of his wealth, the selection is done by drawing lots. Abu Ḥanīfah

says that this method of selection is invalid and dangerous. Instead, he argues that a portion of each one of his slaves is set free, and the slaves are allowed to work and earn in order to buy their freedom. This view is refuted by this authentic hadith and many other hadiths. The hadith mentions that the Prophet set two slaves free and kept the other four as slaves. This clearly rejects Abu Ḥanīfah's view, which was also expressed by al-Shaʿbī, al-Nakhaʿī, Sharīḥ, al-Ḥasan, and also attributed to Ibn al-Musayyib.

Transmission

The last chain of transmission of hadith No. 3797 includes: 'Hishām ibn Ḥassān narrated; from Muhammad ibn Sīrīn; from ʿImrān ibn Ḥuṣayn'. This is one of the hadiths al-Dāraquṭnī questions in Muslim's *Ṣaḥīḥ*, saying that it is suggested that Ibn Sīrīn did not hear it directly from ʿImrān ibn Ḥuṣayn. Rather, Ibn Sīrīn heard it from Khālid al-Ḥadhdhā', from Abu Qilābah, from Abu al-Muhallab, from ʿImrān. This is stated by ʿAlī ibn al-Madīnī.

When looking at this we realize that there is no clear statement that Ibn Sīrīn did not hear the hadith from ʿImrān ibn Ḥuṣayn. Yet even if this is proven, it does not detract from the authenticity of the hadith and Imam Muslim cannot be blamed for including it. He enters it as an endorsement, after having stated the clearer and more authentic chains of transmission. We mentioned similar cases earlier, but God knows best.

i. Related by al-Bukhari in a shorter version, 2521; Abu Dāwūd, 3947.
ii. Related by Abu Dāwūd, 3946; al-Tirmidhī, 1347; al-Nasā'ī, 4712.
iii. Related by Abu Dāwūd, 3958, 3959 and 3960; al-Tirmidhī, 1364; Ibn Mājah, 2345.
iv. Related by Abu Dāwūd, 3961.

v. To clarify this point, the man had no other property and he set his slaves free, knowing that rich reward is promised to the one who sets a slave free. Thus, he was making a will in the full amount of his property and by so doing, he denied his heirs their right. In Islam, a person can make a will not exceeding one-third of his property, and such a will goes to non-heirs. The remainder goes to his heirs in accordance with the Islamic system of inheritance.

CHAPTER 13

SELLING A SLAVE PROMISED POSTHUMOUS FREEDOM

[3798–58]. (Dar al-Salam 4115) Abu al-Rabīʿ Sulaymān ibn Dāwūd al-ʿAtakī narrated:[i] Ḥammād (meaning Ibn Zayd) narrated; from ʿAmr ibn Dīnār; from Jābir ibn ʿAbdullāh; that **'A man from the Anṣār [agreed to] set a slave he had free when he himself died. The man had no other property. The Prophet was informed of this arrangement. He said: "Who will buy him from me?" Nuʿaym ibn ʿAbdullāh bought him for eight hundred dirhams, and he gave him the price'.**

ʿAmr said: **'I heard Jābir ibn ʿAbdullāh say: "He was a Coptic slave and he died the year before last".'**

حَدَّثَنَا أَبُو الرَّبِيعِ سُلَيْمَانُ بْنُ دَاوُدَ الْعَتَكِيُّ، حَدَّثَنَا حَمَّادٌ (يَعْنِي ابْنَ زَيْدٍ)، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ رَجُلاً مِنَ الأَنْصَارِ أَعْتَقَ غُلاَمًا لَهُ عَنْ دُبُرٍ، لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ. فَبَلَغَ ذَلِكَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: «مَنْ يَشْتَرِيهِ مِنِّي»؟ فَاشْتَرَاهُ نُعَيْمُ بْنُ عَبْدِ اللهِ بِثَمَانِمِائَةِ دِرْهَمٍ، فَدَفَعَهَا إِلَيْهِ.

قَالَ عَمْرٌو سَمِعْتُ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: عَبْدًا قِبْطِيًّا مَاتَ عَامَ أَوَّلَ.

[3799–59]. (Dar al-Salam 4116–4118) Abu Bakr ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated:[ii] from Ibn ʿUyaynah; Abu Bakr

said: Sufyān ibn ʿUyaynah narrated. He said: ‘ʿ**Amr heard Jābir said: “A man from the Anṣār promised his slave to be free on his own death, and he had no other property. God’s Messenger (peace be upon him) sold the slave”. Jābir said: “Ibn al-Naḥḥām bought him: he was a Coptic slave and died the year before last, during Ibn al-Zubayr’s reign”.’**

وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، عَنِ ابْنِ عُيَيْنَةَ. قَالَ أَبُو بَكْرٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: سَمِعَ عَمْرٌو جَابِرًا يَقُولُ: دَبَّرَ رَجُلٌ مِنَ الأَنْصَارِ غُلاَمًا لَهُ، لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ. فَبَاعَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. قَالَ جَابِرٌ: فَاشْتَرَاهُ ابْنُ النَّحَّامِ: عَبْدًا قِبْطِيًّا مَاتَ عَامَ أَوَّلَ فِي إِمَارَةِ ابْنِ الزُّبَيْرِ.

Qutaybah ibn Saʿīd and Ibn Rumḥ narrated: from al-Layth ibn Saʿd; from Abu al-Zubayr; from Jābir; from the Prophet (peace be upon him); concerning a slave promised posthumous freedom: **a similar text to Ḥammād’s narration from ʿAmr ibn Dīnār.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَابْنُ رُمْحٍ، عَنِ اللَّيْثِ بْنِ سَعْدٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي الْـمُدَبَّرِ: نَحْوَ حَدِيثِ حَمَّادٍ عَنْ عَمْرِو بْنِ دِينَارٍ.

Qutaybah ibn Saʿīd narrated: al-Mughīrah (meaning al-Ḥizāmī) narrated; from ʿAbd al-Majīd ibn Suhayl; from ʿAṭā’ ibn Abi Rabāḥ; from Jābir ibn ʿAbdullāh [H]. Also, ʿAbdullāh ibn Hāshim narrated to me:[iii] Yaḥyā (meaning Ibn Saʿīd) narrated; from al-Ḥusayn ibn Dhakwān al-Muʿallim; ʿAṭā’ narrated to me; from Jābir [H]. And, Abu Ghassān al-Mismaʿī narrated to me: Muʿādh narrated; my father narrated to me; from Maṭar; from ʿAṭā’ ibn Abi

Rabāḥ, Abu al-Zubayr and ʿAmr ibn Dīnār; that Jābir ibn ʿAbdullāh narrated concerning the sale of a slave who was promised posthumous freedom. All these said: from the Prophet (peace be upon him): **a similar text to the narrations of Ḥammād and Ibn ʿUyaynah, from ʿAmr from Jābir.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا الْـمُغِيرَةُ (يَعْنِي الْحِزَامِيَّ)، عَنْ عَبْدِ الْـمَجِيدِ بْنِ سُهَيْلٍ، عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، ح. وَحَدَّثَنِي عَبْدُ اللهِ بْنُ هَاشِمٍ، حَدَّثَنَا يَحْيَى (يَعْنِي ابْنَ سَعِيدٍ)، عَنِ الْحُسَيْنِ بْنِ ذَكْوَانَ الْـمُعَلِّمِ، حَدَّثَنِي عَطَاءٌ، عَنْ جَابِرٍ، ح. وَحَدَّثَنِي أَبُو غَسَّانَ الْـمِسْمَعِيُّ، حَدَّثَنَا مُعَاذٌ، حَدَّثَنِي أَبِي، عَنْ مَطَرٍ، عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَأَبِي الزُّبَيْرِ، وَعَمْرِو بْنِ دِينَارٍ، أَنَّ جَابِرَ بْنَ عَبْدِ اللهِ حَدَّثَهُمْ فِي بَيْعِ الْـمُدَبَّرِ. كُلُّ هَؤُلاَءِ قَالَ: عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمَعْنَى حَدِيثِ حَمَّادٍ، وَابْنِ عُيَيْنَةَ، عَنْ عَمْرٍو، عَنْ جَابِرٍ.

Text Explanation

Hadith No. 3798 mentions the case of the Anṣārī man who said to his slave that he would free him when he dies. When the Prophet was informed of this, coupled with the information that the slave constituted all the Anṣārī man's property, the Prophet offered the slave for sale. The Anṣārī man was called Abu Madhkūr and his slave's name was Yaʿqūb. The hadith confirms the view of the Shāfiʿī School and other scholars that it is permissible to sell a slave who has been promised posthumous freedom before his master's death. This is evidenced by this hadith and in the analogy of selling a slave who is given his freedom by his master's will. This latter one is unanimously agreed to be permissible to sell. Other scholars who permit the sale of the slave promised posthumous freedom include ʿĀ'ishah, Ṭāwūs, ʿAṭā', al-Ḥasan, Mujāhid, Ahmad, Isḥāq, Abu Thawr and Dāwūd.

On the other hand, Abu Ḥanīfah, Mālik and the majority of early scholars of Hijaz, Syria and Kufah say that it is not permissible to sell a slave when his master promised him freedom at his own death. These scholars say that the Prophet sold him because his master had owed money. A hadith related by al-Nasā'ī and al-Dāraquṭnī mentions that the Prophet said to his master: 'Repay your debt with his price'. This is the reason why the Prophet gave him the price of the slave. Some Mālikī scholars said that it was because the Anṣārī man had no other property that his action was rejected. They add that the same applies to the action of a person who gives all his property as *ṣadaqah*, or charity. This is a weak argument, indeed a false one. A person is free to give all his property to charity during his lifetime. *Qadi* ʿIyāḍ said: 'To me, the Prophet most probably did this in consideration of the man's own welfare, because he left himself with nothing'. The right view is what we have already said, meaning that the hadith should be understood as it clearly means, which is the permissibility of selling a slave given such a promise, as long as his master remains alive, but God knows best.

All Muslims agree that to promise a slave posthumous freedom is valid. Moreover, Mālik, al-Shāfiʿī and the majority of scholars say his freedom is taken out of the one-third a person may bequeath to non-heirs. Al-Layth and Zufar said that it is taken from the total property left by the master.

The hadith shows that the ruler should always look at what serves the interests of his people and should instruct them to do what makes things easier and lighter for them. He advises them to invalidate any action that harms them, if it can be invalidated.

Hadith No. 3798 mentions that Nuʿaym ibn ʿAbdullāh bought the slave, and in No. 3799 Ibn al-Naḥḥām bought him. It is said that the second version is wrong and the correct view is that al-Naḥḥām bought him. It was Nuʿaym who bought and Nuʿaym is al-Naḥḥām. He is given this nickname because the Prophet said: 'I entered heaven and I heard there a sound of

Nuʿaym'. The Prophet used the word *nuḥmah* to indicate 'sound'. Hence, the adjective Naḥḥām was coined for him, but God knows best.

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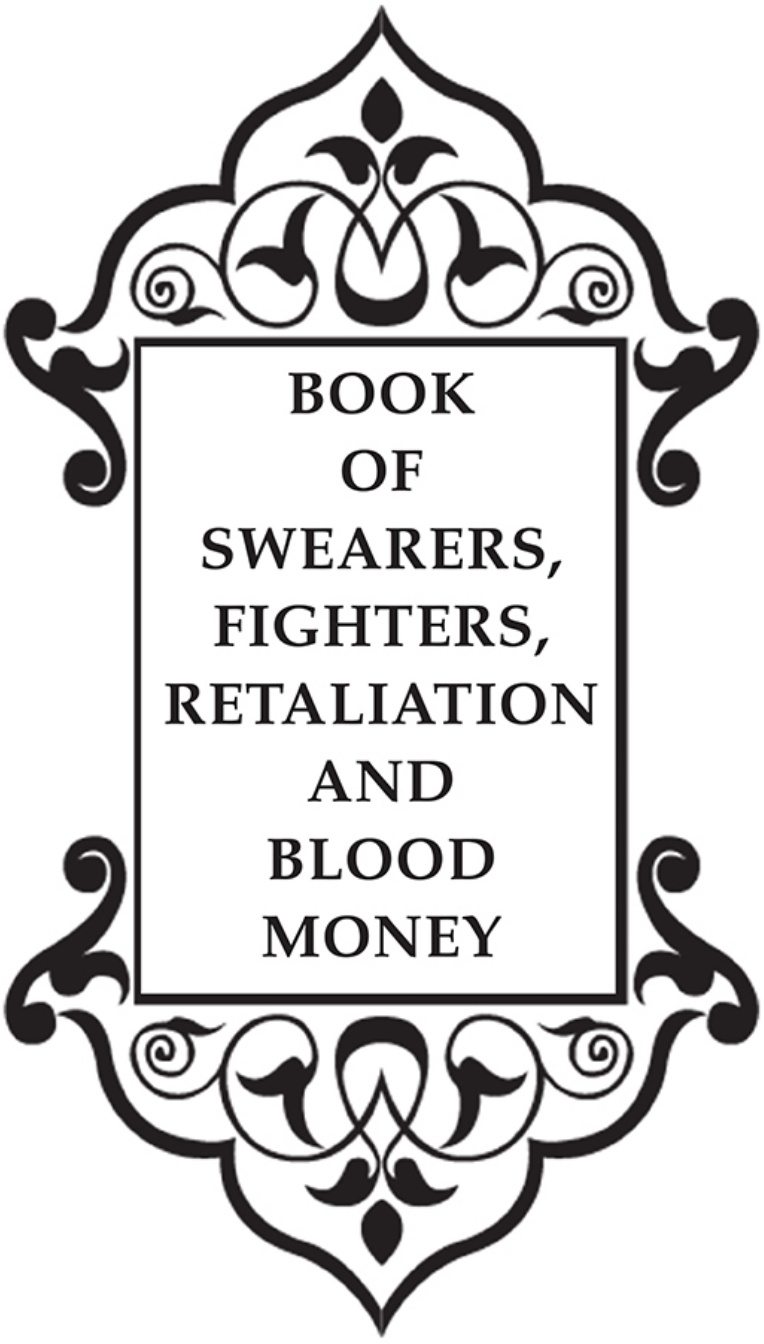
i. Related by al-Bukhari, 6716 and 6947.

ii. Related by al-Bukhari in a shorter version, 2231; al-Tirmidhī, 1219; Ibn Mājah, 2513.

iii. Related by al-Bukhari, 2141 and 2403.


BOOK
OF
SWEARERS,
FIGHTERS,
RETALIATION
AND
BLOOD
MONEY

CHAPTER 1

SWEARERS

[3800–1]. (Dar al-Salam 4119) Qutaybah ibn Saʿīd narrated:[i] Layth narrated; from Yaḥyā (who is Ibn Saʿīd(; from Bushayr ibn Yasār; from Sahl ibn Abi Ḥathamah (Yaḥyā said: and I think he said:) and Rāfiʿ ibn Khadīj; that both said: **‘ʿAbdullāh ibn Sahl ibn Zayd and Muḥayyiṣah ibn Masʿūd ibn Zayd went on a journey. When they were in Khaybar, they separated to attend to some matters. Then Muḥayyiṣah found ʿAbdullāh ibn Sahl killed. He buried him, then came to God’s Messenger (peace be upon him) accompanied by Ḥuwayyiṣah ibn Masʿūd and ʿAbd al-Raḥmān ibn Sahl, who was the youngest of them. ʿAbd al-Raḥmān wanted to speak before his two companions, but God’s Messenger (peace be upon him) said to him: “Allow the seniors,” (meaning older in age) and he stopped speaking. His two companions spoke, and he spoke also. They mentioned to God’s Messenger the killing of ʿAbdullāh ibn Sahl. He said to them: “Will you swear fifty oaths and you will have your man?” (Or your killer). They said: “How can we swear when we did not witness?” He said: “Will the Jews be absolved by swearing fifty oaths?” They said: “How can we accept the oaths of unbelievers?” When God’s Messenger saw this situation, he gave the deceased’s blood money.’**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنْ يَحْيَى (وَهُوَ ابْنُ سَعِيدٍ)، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، قَالَ يَحْيَى وَحَسِبْتُ قَالَ: وَعَنْ رَافِعِ بْنِ خَدِيجٍ، أَنَّهُمَا قَالا: خَرَجَ عَبْدُ اللهِ بْنُ سَهْلِ بْنِ زَيْدٍ، وَمُحَيِّصَةُ بْنُ مَسْعُودِ بْنِ زَيْدٍ، حَتَّى إِذَا كَانَا بِخَيْبَرَ تَفَرَّقَا فِي بَعْضِ مَا هُنَالِكَ. ثُمَّ إِذَا مُحَيِّصَةُ يَجِدُ عَبْدَ اللهِ بْنَ سَهْلٍ قَتِيلاً، فَدَفَنَهُ. ثُمَّ أَقْبَلَ إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ هُوَ وَحُوَيِّصَةُ بْنُ مَسْعُودٍ، وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ، وَكَانَ أَصْغَرَ الْقَوْمِ. فَذَهَبَ عَبْدُ الرَّحْمَنِ لِيَتَكَلَّمَ قَبْلَ صَاحِبَيْهِ، فَقَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «كَبِّرِ». الْكُبْرَ فِي السِّنِّ. فَصَمَتَ، فَتَكَلَّمَ صَاحِبَاهُ وَتَكَلَّمَ مَعَهُمَا، فَذَكَرُوا لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مَقْتَلَ عَبْدِ اللهِ بْنِ سَهْلٍ. فَقَالَ لَهُمْ: «أَتَحْلِفُونَ خَمْسِينَ يَمِينًا فَتَسْتَحِقُّونَ صَاحِبَكُمْ». أَوْ «قَاتِلَكُمْ»؟ قَالُوا: وَكَيْفَ نَحْلِفُ وَلَمْ نَشْهَدْ؟ قَالَ: «فَتُبْرِئُكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا»؟ قَالُوا: وَكَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ؟ فَلَمَّا رَأَى ذَلِكَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَعْطَى عَقْلَهُ.

[3801–2]. (Dar al-Salam 4120) ʿUbaydullāh ibn ʿUmar al-Qawārīrī narrated to me: Ḥammād ibn Zayd narrated; Yaḥyā ibn Saʿīd narrated; from Bushayr ibn Yasār; from Sahl ibn Abi Ḥathamah and Rāfiʿ ibn Khadīj; that **‘Muḥayyiṣah ibn Masʿūd and ʿAbdullāh ibn Sahl went out towards Khaybar and they separated in the date farms. ʿAbdullāh ibn Sahl was killed, and the Jews were accused [of killing him]. His brother, ʿAbd al-Raḥmān, and his two cousins Ḥuwayyiṣah and Muḥayyiṣah came to the Prophet. ʿAbd al-Raḥmān started to speak about his brother, and he was younger than them. God’s Messenger (peace be upon him) said: “Allow the elder”, or “Let the elder start”. Both spoke about their relative’s case. God’s Messenger said: “Will fifty of you swear against one of them and he will be handed over to you?” They said: “How can we swear about something we did not witness?” He said: “Will the Jews satisfy you by the oaths of**

fifty of their numbers?" They said: "Messenger of God; they are unbelievers!" God's Messenger paid his blood money himself.'

Sahl said: **'One day, I entered a camel fold of theirs and one of those she-camels kicked me with her leg'.**

Ḥammād said: **'This or something similar'.**

وَحَدَّثَنِي عُبَيْدُ اللهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ وَرَافِعِ بْنِ خَدِيجٍ، أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ وَعَبْدَ اللهِ بْنَ سَهْلٍ انْطَلَقَا قِبَلَ خَيْبَرَ، فَتَفَرَّقَا فِي النَّخْلِ. فَقُتِلَ عَبْدُ اللهِ بْنُ سَهْلٍ، فَاتَّهَمُوا الْيَهُودَ. فَجَاءَ أَخُوهُ عَبْدُ الرَّحْمَنِ وَابْنَا عَمِّهِ حُوَيِّصَةُ وَمُحَيِّصَةُ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ، وَهُوَ أَصْغَرُ مِنْهُمْ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «كَبِّرِ الْكُبْرَ». أَوْ قَالَ: «لِيَبْدَإِ الأَكْبَرُ». فَتَكَلَّمَا فِي أَمْرِ صَاحِبِهِمَا. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ»؟ قَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ. كَيْفَ نَحْلِفُ؟ قَالَ: «فَتُبْرِئُكُمْ يَهُودُ بِأَيْمَانِ خَمْسِينَ مِنْهُمْ»؟ قَالُوا: يَا رَسُولَ اللهِ قَوْمٌ كُفَّارٌ. قَالَ: فَوَدَاهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ قِبَلِهِ.

قَالَ سَهْلٌ فَدَخَلْتُ مِرْبَدًا لَهُمْ يَوْمًا، فَرَكَضَتْنِي نَاقَةٌ مِنْ تِلْكَ الإِبِلِ رَكْضَةً بِرِجْلِهَا.

قَالَ حَمَّادٌ هَذَا أَوْ نَحْوَهُ.

[3802–000]. (Dar al-Salam 4121–4122) Al-Qawārīrī narrated: Bishr ibn al-Mufaḍḍal narrated; Yaḥyā ibn Saʿīd narrated; from Bushayr ibn Yasār; from Sahl ibn Abi Ḥathamah; from the Prophet (peace be upon him); **a similar text. He said in his narration: 'God's Messenger (peace be upon him) paid his blood money', but did not say: 'a she-camel kicked me'.**

وَحَدَّثَنَا الْقَوَارِيرِيُّ، حَدَّثَنَا بِشْرُ بْنُ الْـمُفَضَّلِ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: نَحْوَهُ. وَقَالَ فِي حَدِيثِهِ: فَعَقَلَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ عِنْدِهِ. وَلَمْ يَقُلْ فِي حَدِيثِهِ فَرَكَضَتْنِي نَاقَةٌ.

ʿAmr al-Nāqid narrated: Sufyān ibn ʿUyaynah narrated [H]. Also, Muhammad ibn al-Muthannā narrated; ʿAbd al-Wahhāb (meaning al-Thaqafī) narrated; all from Yaḥyā ibn Saʿīd; from Bushayr ibn Yasār; from Sahl ibn Abi Ḥathamah: **a similar text.**

حَدَّثَنَا عَمْرٌو النَّاقِدُ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا عَبْدُ الْوَهَّابِ (يَعْنِي الثَّقَفِيَّ)، جَمِيعًا عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ: بِنَحْوِ حَدِيثِهِمْ.

[3803–3]. (Dar al-Salam 4123) ʿAbdullāh ibn Maslamah ibn Qaʿnab narrated: Sulaymān ibn Bilāl narrated; from Yaḥyā ibn Saʿīd; from Bushayr ibn Yasār; that **‘ʿAbdullāh ibn Sahl ibn Zayd and Muḥayyiṣah ibn Masʿūd ibn Zayd of the Anṣār, from the Ḥārithah clan, went out to Khaybar during God’s Messenger’s lifetime, when it was in peace [with Muslims], and inhabited by Jews. They separated to look after their business. ʿAbdullāh ibn Sahl was killed and was found dead in a shallow hole. His companion buried him then went back to Madinah. The victim’s brother ʿAbd al-Raḥmān ibn Sahl went with Muḥayyiṣah and Ḥuwayyiṣah and mentioned ʿAbdullāh’s case to God’s Messenger and where he was killed. Bushayr claimed as he was narrating from the Prophet’s companions he met that the Prophet said to them: “Will you swear fifty oaths and take**

your murderer?" (Or your man). They said: "Messenger of God, we neither witnessed nor were present". He claimed that the Prophet said: "Will the Jews absolve themselves with fifty?" They said: "Messenger of God, how can we accept the oaths of people who are unbelievers?" Bushayr claimed that God's Messenger paid his blood money from his own resources'.

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ بْنِ قَعْنَبٍ، حَدَّثَنَا سُلَيْمَانُ بْنُ بِلاَلٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، أَنَّ عَبْدَ اللهِ بْنَ سَهْلِ بْنِ زَيْدٍ، وَمُحَيِّصَةَ بْنَ مَسْعُودِ بْنِ زَيْدٍ الأَنْصَارِيَّيْنِ، ثُمَّ مِنْ بَنِي حَارِثَةَ، خَرَجَا إِلَى خَيْبَرَ فِي زَمَانِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَهِيَ يَوْمَئِذٍ صُلْحٌ، وَأَهْلُهَا يَهُودُ. فَتَفَرَّقَا لِحَاجَتِهِمَا. فَقُتِلَ عَبْدُ اللهِ بْنُ سَهْلٍ، فَوُجِدَ فِي شَرَبَةٍ مَقْتُولاً فَدَفَنَهُ صَاحِبُهُ، ثُمَّ أَقْبَلَ إِلَى الْمَدِينَةِ. فَمَشَى أَخُو الْمَقْتُولِ عَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ وَمُحَيِّصَةُ وَحُوَيِّصَةُ فَذَكَرُوا لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ شَأْنَ عَبْدِ اللهِ، وَحَيْثُ قُتِلَ. فَزَعَمَ بُشَيْرٌ وَهُوَ يُحَدِّثُ عَمَّنْ أَدْرَكَ مِنْ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ لَهُمْ: «تَحْلِفُونَ خَمْسِينَ يَمِينًا وَتَسْتَحِقُّونَ قَاتِلَكُمْ»، أَوْ «صَاحِبَكُمْ»؟ قَالُوا: يَا رَسُولَ اللهِ، مَا شَهِدْنَا وَلا حَضَرْنَا. فَزَعَمَ أَنَّهُ قَالَ: «فَتُبْرِئُكُمْ يَهُودُ بِخَمْسِينَ»؟ فَقَالُوا: يَا رَسُولَ اللهِ، كَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ؟ فَزَعَمَ بُشَيْرٌ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَقَلَهُ مِنْ عِنْدِهِ.

[3804–4]. (Dar al-Salam 4124) Yaḥyā ibn Yaḥyā narrated: Hushaym reported; from Yaḥyā ibn Saʿīd; from Bushayr ibn Yasār; that **'a man from the Ḥārithah clan of the Anṣār called ʿAbdullāh ibn Sahl ibn Zayd went along with a cousin of his named Muḥayyiṣah ibn Masʿūd ibn Zayd…' he narrated the hadith in similar terms to al-Layth's narration, up to 'God's Messenger paid his blood money from his own resources'.**

Yaḥyā said: Bushayr ibn Yasār narrated to me. He said: Sahl ibn Abi Ḥathamah reported to me, saying: **‘One of those camels in the fold kicked me’.**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى، أَخْبَرَنَا هُشَيْمٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، أَنَّ رَجُلاً مِنَ الأَنْصَارِ مِنْ بَنِي حَارِثَةَ، يُقَالُ لَهُ عَبْدُ اللهِ بْنُ سَهْلِ بْنِ زَيْدٍ، انْطَلَقَ هُوَ وَابْنُ عَمٍّ لَهُ يُقَالُ لَهُ مُحَيِّصَةُ بْنُ مَسْعُودِ بْنِ زَيْدٍ. وَسَاقَ الْحَدِيثَ بِنَحْوِ حَدِيثِ اللَّيْثِ، إِلَى قَوْلِهِ فَوَدَاهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ عِنْدِهِ.

قَالَ يَحْيَى فَحَدَّثَنِي بُشَيْرُ بْنُ يَسَارٍ قَالَ: أَخْبَرَنِي سَهْلُ بْنُ أَبِي حَثْمَةَ قَالَ: لَقَدْ رَكَضَتْنِي فَرِيضَةٌ مِنْ تِلْكَ الْفَرَائِضِ بِالْـمِرْبَدِ.

[3805–5]. (Dar al-Salam 4125) Muhammad ibn ʿAbdullāh ibn Numayr narrated: my father narrated; Saʿīd ibn ʿUbayd narrated; Bushayr ibn Yasār al-Anṣārī narrated; from Sahl ibn Abi Ḥathamah al-Anṣārī; that he told him that **‘Some of them went to Khaybar, and there they went their separate ways. They found one of them killed…’ he narrated the hadith and said: ‘God’s Messenger (peace be upon him) disliked that his life should be forfeited. Therefore, he paid his blood money: one hundred of the charity camels’.**

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا سَعِيدُ بْنُ عُبَيْدٍ، حَدَّثَنَا بُشَيْرُ بْنُ يَسَارٍ الأَنْصَارِيُّ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ الأَنْصَارِيِّ، أَنَّهُ أَخْبَرَهُ أَنَّ نَفَرًا مِنْهُمُ انْطَلَقُوا إِلَى خَيْبَرَ، فَتَفَرَّقُوا فِيهَا، فَوَجَدُوا أَحَدَهُمْ قَتِيلاً... وَسَاقَ الْحَدِيثَ، وَقَالَ فِيهِ: فَكَرِهَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُبْطِلَ دَمَهُ، فَوَدَاهُ مِائَةً مِنْ إِبِلِ الصَّدَقَةِ.

[3806–6]. (Dar al-Salam 4126) Isḥāq ibn Manṣūr narrated to me: Bishr ibn ʿUmar reported to me. He said: I heard Mālik ibn Anas say: Abu Laylā ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Sahl narrated to me; from Sahl ibn Abi Ḥathamah; that he reported to him from some elders of his people that ‘ʿ**Abdullāh ibn Sahl and Muḥayyiṣah went to Khaybar, as they were going through hard times. Muḥayyiṣah came back reporting that ʿAbdullāh ibn Sahl was killed and thrown in a shallow hole. He went to the Jews and said: “By God, you have killed him”. They said: “By God, we have not killed him”. He then returned to his people and reported to them what happened. He then went [to God’s Messenger] with his elder brother, Ḥuwayyiṣah, and ʿAbd al-Raḥmān ibn Sahl. Muḥayyiṣah, the one who was at Khaybar, started to speak, but God’s Messenger (peace be upon him) said to him: “Let the elder”. (He wanted their eldest to speak first.) Ḥuwayyiṣah spoke, then Muḥayyiṣah spoke. God’s Messenger (peace be upon him) said: “They will either pay your man’s blood money or they will declare a state of war”. God’s Messenger wrote to them about the case. They wrote back saying: “By God, we did not kill him”. God’s Messenger said to Ḥuwyiṣṣah, Muḥayyiṣṣah and ʿAbd al-Raḥmān: “Will you swear and deserve the blood money for your man?” They said: “No”. He said: “Shall the Jews swear to you?” They said: “They are not Muslims”. God’s Messenger (peace be upon him) paid his blood money from his own resources. He sent them one hundred she-camels which were brought to them in their quarters.’**

Sahl said: ‘**One reddish she-camel of these kicked me’.**

حَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا بِشْرُ بْنُ عُمَرَ قَالَ: سَمِعْتُ مَالِكَ بْنَ أَنَسٍ يَقُولُ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ، أَنَّ عَبْدَ اللهِ بْنَ سَهْلٍ وَمُحَيِّصَةَ خَرَجَا إِلَى خَيْبَرَ مِنْ جَهْدٍ أَصَابَهُمْ. فَأَتَى مُحَيِّصَةُ، فَأَخْبَرَ أَنَّ عَبْدَ اللهِ بْنَ سَهْلٍ قَدْ قُتِلَ، وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ. فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاللهِ قَتَلْتُمُوهُ. قَالُوا: وَاللهِ مَا قَتَلْنَاهُ. ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ، فَذَكَرَ لَهُمْ ذَلِكَ. ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيِّصَةُ، وَهُوَ أَكْبَرُ مِنْهُ، وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ. فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ، وَهُوَ الَّذِي كَانَ بِخَيْبَرَ فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لِمُحَيِّصَةَ: «كَبِّرْ، كَبِّرْ»، يُرِيدُ السِّنَّ. فَتَكَلَّمَ حُوَيِّصَةُ، ثُمَّ تَكَلَّمَ مُحَيِّصَةُ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِمَّا أَنْ يَدُوا صَاحِبَكُمْ، وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ». فَكَتَبَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِلَيْهِمْ فِي ذَلِكَ، فَكَتَبُوا إِنَّا وَاللهِ مَا قَتَلْنَاهُ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لِحُوَيِّصَةَ وَمُحَيِّصَةَ وَعَبْدِ الرَّحْمَنِ: «أَتَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ»؟ قَالُوا لا. قَالَ: «فَتَحْلِفُ لَكُمْ يَهُودُ». قَالُوا: لَيْسُوا بِمُسْلِمِينَ. فَوَدَاهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنْ عِنْدِهِ. فَبَعَثَ إِلَيْهِمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِائَةَ نَاقَةٍ، حَتَّى أُدْخِلَتْ عَلَيْهِمُ الدَّارَ. فَقَالَ سَهْلٌ فَلَقَدْ رَكَضَتْنِي مِنْهَا نَاقَةٌ حَمْرَاءُ.

[3807–7]. (Dar al-Salam 4127) Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me:[ii] Ibn Wahb (Abu al-Ṭāhir said: ‘narrated’ and Ḥarmalah said: ‘reported’); Yūnus reported to me; from Ibn Shihāb; Abu Salamah ibn ʿAbd al-Raḥmān and Sulaymān ibn Yasār, the *mawlā* of Maymūnah the Prophet’s wife, reported to me; from an Anṣārī companion of the Prophet that **‘God’s Messenger (peace be upon him) approved the mutual swearing as it was prior to Islam’.**

حَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى. (قَالَ أَبُو الطَّاهِرِ حَدَّثَنَا وَقَالَ حَرْمَلَةُ أَخْبَرَنَا) ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ وَسُلَيْمَانُ بْنُ يَسَارٍ مَوْلَى مَيْمُونَةَ زَوْجِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنَ الأَنْصَارِ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَقَرَّ الْقَسَامَةَ عَلَى مَا كَانَتْ عَلَيْهِ فِي الْجَاهِلِيَّةِ.

[3808–8]. (Dar al-Salam 4128–4129) Muhammad ibn Rāfiʿ narrated: ʿAbd al-Razzāq narrated; Ibn Jurayj reported; Ibn Shihāb narrated; with this chain of transmission: **the same text, adding: ‘God’s Messenger (peace be upon him) ruled on this basis in the case of some people from the Anṣār who claimed that one of them was killed by the Jews’.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، قَالَ أَخْبَرَنَا ابْنُ جُرَيْجٍ، حَدَّثَنَا ابْنُ شِهَابٍ بِهَذَا الإِسْنَادِ: مِثْلَهُ. وَزَادَ: وَقَضَى بِهَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَيْنَ نَاسٍ مِنَ الأَنْصَارِ، فِي قَتِيلٍ ادَّعَوْهُ عَلَى الْيَهُودِ.

Ḥasan ibn ʿAlī al-Ḥulwānī narrated: Yaʿqūb (who is Ibn Ibrāhīm ibn Saʿd) narrated; my father narrated; from Ṣāliḥ; from Ibn Shihāb; that Abu Salamah ibn ʿAbd al-Raḥmān and Sulaymān ibn Yasār reported to him from some Anṣārī people; from the Prophet (peace be upon him): **the same text as Ibn Jurayj’s narration.**

وَحَدَّثَنَا حَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ، حَدَّثَنَا يَعْقُوبُ (وَهُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ)، حَدَّثَنَا أَبِي، عَنْ صَالِحٍ، عَنِ ابْنِ شِهَابٍ، أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ وَسُلَيْمَانَ بْنَ يَسَارٍ أَخْبَرَاهُ، عَنْ نَاسٍ مِنَ الأَنْصَارِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِ حَدِيثِ ابْنِ جُرَيْجٍ.

Text Explanation

In this chapter Muslim mentions the hadith concerning Ḥuwayyiṣah and Muḥayyiṣah in its different versions and chains of transmission. The hadith mentions that Muḥayyiṣah found his cousin ʿAbdullāh ibn Sahl when he was killed at Khaybar. The Prophet said to his relatives: 'Will you swear fifty oaths and you will have your man, or your killer?' *Qadi* ʿIyāḍ said:

> The hadith concerning mutual oaths is one of the principles of Islamic law and a basis of rulings. It is an essential aspect of looking after people and their interests. It was upheld by all scholars among the Prophet's companions and the *tābiʿīn*, as well as their successors of scholars of Hijaz, Syria, Kufah and others. However, they differ in their ways of implementation. It is also reported that the 'mutual oaths' procedure was invalid and that it was not operated. Scholars who share this view of its invalidity include Sālim ibn ʿAbdullāh, Sulaymān ibn Yasār, al-Ḥakam ibn ʿUyaynah, Qatādah, Abu Qilābah, Muslim ibn Khālid, Ibn ʿUlayyah, al-Bukhari, as well as others. Both views are also reported to have been stated by ʿUmar ibn ʿAbd al-ʿAzīz.

Scholars who validate it differ on the punishment when the killing is deliberate: does it entail retaliation, i.e., the death punishment? Most scholars of the Hijaz say that it is required. This is the view shared by al-Zuhrī, Rabīʿah, Abu al-Zinād, Mālik and his disciples, al-Layth, al-Awzāʿī, Ahmad, Isḥāq, Abu Thawr, Dāwūd, al-Shāfiʿī in his older version, and it is the view reported from Ibn al-Zubayr and ʿUmar ibn ʿAbd al-ʿAzīz. Abu al-Zinād said: 'We expressed this view when God's Messenger's Companions were available in large numbers. To me, I could see that they were one thousand. There was no difference of views among them. The Kufi scholars and al-Shāfiʿī in his more correct view said that it does not require retaliation, but it imposes blood money. This view is also reported from al-

Ḥasan al-Baṣrī, al-Shaʿbī, al-Nakhaʿī, ʿUthman al-Laythī and al-Ḥasan ibn Ṣāliḥ. It is also reported from Abu Bakr, ʿUmar, Ibn ʿAbbās and Muʿāwiyah (may God be pleased with them).

Scholars differ as to who will swear in this procedure. Mālik, al-Shāfiʿī and the majority of scholars said that the heirs of the victim swear and that it is obligatory that they swear fifty oaths. They cite this authentic hadith in evidence, as it clearly states that the plaintiffs swear first. This is confirmed in many authentic chains of transmission that cannot be overruled. Mālik said: It has been the consensus of the Muslim community in previous generations and at present that the accusers start with their oaths. Theirs is the stronger side. *Qadi* ʿIyāḍ said:

> Those scholars rule that the reports of those who claim that the defendants start the process of mutual swearing are mistaken, because they drop the start by the oaths of the plaintiffs and do not mention the response oaths. Moreover, the one who reports starting with the plaintiff actually gives an addition which is reported in a variety of well-known ways. Therefore, it must be acted on, and it cannot be contradicted by the reports of those who had forgotten.
>
> All scholars who do not require retaliation, limiting the punishment to the payment of blood money, say that the defendants start the oaths process, except for al-Shāfiʿī and Ahmad who share the view of the majority, starting the process with the oaths of the plaintiffs. If the plaintiffs refuse, then the defendants are asked to swear. Scholars are unanimous that neither retaliation, nor blood money are incurred merely by the accusation, unless there are some indications to give the accusation a strong probability. Scholars differ as to the sort of indication that shows such probability and requires the operation of the oath procedure. It takes seven forms:
>
> 1. The victim says before he dies: So-and-so is the one who has killed me, or hit me, even if there is no visible sign on him, or

he has done this to aggravate my wound, or he wounded me, etc. He must mention that this was done deliberately, because the deliberate action is what requires the oaths procedure according to Mālik and al-Layth. Mālik claims that this was agreed upon by all scholars, past and contemporary. In fact, none else among scholars of all provinces shared their view, nor was it reported from anyone else. All other scholars do not see this as requiring the oath process. Some Mālikī scholars stipulate a condition of the presence of marks or wounds to require this process. Mālik cites the case of the Israelite whose killer was unknown, which is mentioned in the Qur'an: 'We said: Strike him with a piece of it. Thus God brings the dead back to life'. (2: 73) They said: The dead man was brought back to life and informed the people of his killer. Mālik's disciples also argue that such a case is always done with people unaware. Were we to require a witness, without taking the injured man's statement, most such cases will go unpunished. Furthermore, the case is one in which the injured man would be keen to say the truth and avoid lying and disobedience. He wants to stay righteous. Therefore, we should accept what he says. Mālikī scholars also differ, as to whether one witness is sufficient or two are required.

2. An indication not amounting to a clear evidence of causing the death. This is the view of Mālik, al-Layth and al-Shāfiʿī. Such indication may be the testimony of one witness, or the statement of some people who are not very reliable.
3. If two reliable people testify to the injury and the victim lives after that for a few days, then dies without having recovered. Mālik and al-Layth said that this is a good indication, but al-Shāfiʿī and Abu Ḥanīfah said that no oaths procedure is needed

here. The punishment of retaliation is required here on the basis of the testimony of the two reliable witnesses.

4. The accused person is found at the place where the killed person is, or close to it, or coming from that direction and he has the weapon, with a stain of blood or something else on the accused. In addition, there is no wild animal or someone else to suspect the killing. Or, if a group of people separate showing a killed person within the place where they were close together. This is an indication that requires the oath procedure, according to Mālik and al-Shāfiʿī.
5. Two groups of people fight and their fighting results in a killed person. According to Mālik, al-Shāfiʿī, Ahmad and Isḥāq, this calls for the oath procedure. Another report from Mālik says that if the dead man belongs to one group, the other group pays blood money. If he belonged to a third group, both fighting groups share his blood money.
6. The dead man is found in a crowded place. Al-Shāfiʿī said the oath procedure is required and blood money is incurred. Mālik said: the case is written off. Al-Thawrī and Isḥāq said that the blood money is paid by the state treasury. The same is reported to have been expressed by ʿUmar and ʿAlī.
7. The dead man is found in some people's district, or a tribe, or near their mosque. Mālik, al-Layth, al-Shāfiʿī, Ahmad, Dāwūd and other scholars said that this does not require the oath procedure. It is a write-off, because a man may kill another and leave the body in some district, so that the killing is attributed to them. Al-Shāfiʿī said that an exception is the case when a man is found killed in his enemy's quarters which is populated only by their own people. It is similar to the case that took place at Khaybar. The Prophet ruled going through the oath procedure because of the hostility between the Anṣār and the

Jews, and only the Jews lived in Khaybar. Ahmad is reported to have expressed a view similar to al-Shāfiʿī's.

Abu Ḥanīfah, al-Thawrī and most Kufi scholars said that the presence of the body of the killed person in an area or a village requires the oath procedure. This procedure is not valid in any of the seven cases above, except in this case, because it is the one the Prophet ruled on the basis of the oath procedure. Besides, it is only operated if there is some mark on the body of the killed person. They said: If the dead man is found in the mosque, the people of the area are accused, they are called to swear and the blood money is due from the state treasury. Al-Awzāʿī said that the presence of the body of the dead man requires the oath procedure, even if there is no mark on the body. Dāwūd expresses a similar view, but God knows best.

In hadith No. 3800: ''ʿAbd al-Raḥmān wanted to speak before his two companions, but God's Messenger (peace be upon him) said to him: "Allow the seniors," (meaning older in age) and he stopped speaking. His two companions spoke, and he spoke also'. This means that the killed person was ʿAbdullāh ibn Sahl, and he had a brother called ʿAbd al-Raḥmān. He had two cousins, Ḥuwayyiṣah and Muḥayyiṣah, both of whom were older than ʿAbd al-Raḥmān. When ʿAbd al-Raḥmān, the victim's brother, wanted to speak, the Prophet told him to allow the seniors to speak first. The true claim belonged to ʿAbd al-Raḥmān, the victim's brother, not to his two cousins. The Prophet wanted the eldest of the group, Ḥuwayyiṣah to speak, because he did not want him to make the case but to give him a report of what had happened. Had the Prophet wanted to have the claim, the plaintiff himself would have had to speak. It may be that ʿAbd al-Raḥmān asked Ḥuwayyiṣah to help him, or he was asked to deputize for him. This indicates the importance of seniority when people are equal in merit. There are similar situations where the elder is given priority, such as leading the

congregational prayer, or acting for a woman relative in her marriage contract, etc.

The Prophet (peace be upon him) said to them: ‘Will you swear fifty oaths and you will have your man? Or your killer’. It may be asked how the oaths were offered to the three of them, when it should be only the heir who swears. In this case, ʿAbd al-Raḥmān, the victim’s brother was the heir. The other two were the victim’s cousins, and they could not inherit anything when the deceased is survived by a brother. The answer is that it was known to them that the oath procedure is offered to the heir. The speech addressed them all, but it was meant for the heir. This is acceptable because it was known to the addressees, in the same way as he listened to all of them reporting how ʿAbdullāh was killed, although the claim concerning it belonged to the victim’s heir. The Prophet told them that if they were prepared to swear they would have their man. This means that the oaths would confirm their right against the person whom they would name as the killer. Would that right entail retaliation, i.e., the death punishment, or blood money? We have explained the different views of scholars on this point. It should be borne in mind that swearing those oaths was permissible for them if they knew or suspected the offender. The Prophet offered them the procedure if they met this condition. It does not mean that they were permitted to swear without a strong suspicion. Hence, they said: ‘How can we swear when we did not witness?’

The Prophet then asked them: ‘Will the Jews be absolved by swearing fifty oaths?’ This means that they prove their case by swearing fifty oaths. In other words, if the Jews swear these fifty oaths, the whole case would be dropped. Nothing is proven against them, and the accusers would be released from their oaths. This provides evidence that an oath by an unbeliever or a transgressor is valid.

The hadith mentions that the Prophet ‘paid the deceased’s blood money’. The other hadiths mention that he paid it from his own resources. Hadith No. 3805 mentions that ‘God’s Messenger (peace be upon him)

disliked that his life should be forfeited. Therefore, he paid his blood money: one hundred of the charity camels'. The Prophet did so in order to end the conflict and to bring about reconciliation. The family of the deceased had the right only to swear or to require the accused to swear. They did not agree to do either, and they were upset by the murder of their man. Therefore, the Prophet wanted to pacify them and put an end to the dispute by paying the blood money. The Prophet paid the blood money 'from his own resources'. This may mean that he paid it out of his own money. In some situations, it happened that the Prophet had such property. It is also possible that he paid it out of the public treasury, as it served the interests of the Muslim community. Hadith No. 3805 mentions that he paid it 'out of charity camels'. Some scholars said that this is a mistake by some narrators. Obligatory zakat cannot be paid for such a purpose. It goes to certain categories of people whom God has named. Imam Abu Isḥāq al-Marwazī, a Shāfiʿī scholar, said that on the basis of this hadith, it is permissible to pay such blood money out of the camels given as zakat. Thus, he gives his ruling on the basis of the apparent meaning of the hadith. The majority of scholars, including those of our school, say that the statement means that the Prophet bought these camels back from people who were given them as charity, after they had become their owners. He then gave them to the family of the murdered man. *Qadi* ʿIyāḍ quotes some scholars as saying that it is permissible to spend zakat money in ways that serve public interests. They understand this hadith on this basis. Some suggested that the family of the killed person were poor and qualified as beneficiaries of zakat. This is a wrong interpretation, because the blood money is a great amount, which cannot be paid out of zakat to one person or one family, let alone be payable to tribal dignitaries. Some give the statement a different interpretation, suggesting that he paid it to win over the hearts of the Jews, in the hope that they may embrace Islam. This is not sound, because it is not permissible to pay zakat money to an unbeliever. Therefore, the understanding we prefer is that the Prophet bought these camels from the charity camels.

In its various versions, this hadith highlights the following interesting points:

- The ruler must take care of public interests;
- He must endeavour to achieve reconciliation within the community;
- It establishes the procedure of mutual oaths;
- It shows that the oath procedure starts with the plaintiff;
- If the plaintiff refuses to state the oaths, the defendant is called upon to swear;
- The hadith shows that it is permissible to give a verdict in the absence of one party;
- It is permissible to listen to a complaint concerning a case of killing, in the absence of the accused;
- It is permissible to take an oath on the basis of suspicion, even if it remains unconfirmed;
- Judgement in a case between a Muslim and a non-Muslim is passed according to Islamic Shariah.

In hadith No. 3801, the Prophet says to his Companions: 'Will fifty of you swear against one of them and he will be handed over to you?' This must be interpreted, because the oaths are required only from the heir of the killed person, not from anyone else from his tribe. According to our scholars is that fifty oaths are taken from the accusers, stated by the heirs of the victim. No other relative of his is called upon to swear. All the heirs, males and females, are expected to swear, whether the killing was deliberate and intentional or by accident. This is the view of al-Shāfiʿī and it is shared by Abu Thawr and Ibn al-Mundhir. Mālik also shares this view if the killing was accidental. If it is deliberate, Mālik says that relatives swear fifty oaths, but women and children do not participate in swearing. Mālik's view is shared by Rabīʿah, al-Layth, al-Awzāʿī, Ahmad, Dāwūd and the Ẓāhirī scholars. Al-Shāfiʿī cites the Prophet's offer: 'Will you swear fifty oaths and

you will have your man'? He thus shows that the swearers are those who take the blood money or require retaliatory punishment. Needless to say, those who are not heirs do not take anything. This shows that the meaning is the oaths of those who deserve the blood money.

The Prophet said: 'Will fifty of you swear against one of them and he will be handed over to you?' The Prophet uses a figurative expression as though he will be handed over, with a rope tied to his neck. This is taken as evidence that the oaths procedure confirms the punishment of retaliation. We discussed this point and the different views among scholars regarding it. Scholars who say that no retaliation is mandated through the oath procedure understand the Prophet's statement as meaning he is handed to the heirs so that they can take the blood money from him.

This offer by the Prophet indicates that the oath procedure is undertaken in respect of one accused person. This is the view of Mālik and Ahmad. On the other hand, Ashhab and others said that the heirs may swear as they please, but they may kill only one person in retaliation. Al-Shāfiʿī said that if the murdered person's relatives accuse a group of people, they swear against them and they will have to pay the blood money. This is the correct view of al-Shāfiʿī. However, it is said that retaliation applies to them, but if the swearing is against one, it is his own responsibility.

Sahl said: 'One day, I entered a camel fold of theirs and one of those she-camels kicked me with her leg'. Sahl added this statement to indicate that he had reported the hadith accurately, as he had memorized it well.

In hadith No. 3806, the Prophet says: 'They will either pay your man's blood money or they will declare a state of war'. This means that if the murder is confirmed by your oaths, the options before them are either to pay you the blood money, or that they will tell us that they do not accept our rulings. Thus, the treaty between us will come to an end and they will become hostile to us. The hadith further shows that the oath procedure entails the payment of blood money, not the retaliation punishment.

Hadith No. 3805 concludes with: ‘God’s Messenger (peace be upon him) disliked that his life should be forfeited. Therefore, he paid his blood money: one hundred of the charity camels’. This is the last hadith of the part of Muslim’s *Ṣaḥīḥ* which Ibrāhīm ibn Sufyān did not listen to from Muslim. We pointed out the beginning of this portion. The next hadith, No. 3806, begins with: ‘Isḥāq ibn Manṣūr narrated to me: Bishr ibn ʿUmar reported to me; he said: I heard Mālik ibn Anas say: Abu Laylā’. This is the beginning of the remainder of *Ṣaḥīḥ Muslim* which Ibrāhīm ibn Sufyān heard from Muslim. This is how it is reported in most copies. However, in Ibn ʿAsākir’s manuscript, Hadith 3806 is the last of the part Ibrāhīm ibn Sufyān missed, and the resumption begins with Hadith 3807: ‘Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me…’. But the first report is more accurate.

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i. Related by al-Bukhari in a shorter version, 3173 and also 6143, 7192, 2702 and 6898; Abu Dāwūd, 4520, 4521, 4523 and 1638; al-Tirmidhī, 1422; al-Nasā’ī, 4724, 4725, 4726, 4727, 4728, 4729, 4730, 4731, 4732 and 4733; Ibn Mājah, 2677.

ii. Related by al-Nasā’ī, 4721 and in a longer version, 4722, and also, 4723.

CHAPTER 2

RULINGS CONCERNING BANDITRY AND APOSTASY

[3809–9]. (Dar al-Salam 4130) Yaḥyā ibn Yaḥyā al-Tamīmī and Abu Bakr ibn Abi Shaybah narrated: both from Hushaym (Yaḥyā's text). He said: Hushaym reported; from ʿAbd al-ʿAzīz ibn Ṣuhayb and Ḥumayd; from Anas ibn Mālik that **'Some people from [the tribe of] ʿUraynah came to the Prophet in Madīnah, but they fell ill. God's Messenger (peace be upon him) said to them: "You may wish to go out where the charity camels are grazing and drink of their milk and urine". They did that and recovered. They then attacked the shepherds and killed them. They renounced Islam and drove the Prophet's camels away. The Prophet was informed and he sent a force to chase them. They were brought to him. He ordered that their hands and feet to be cut off, and their eyes to be put out. They were left at al-Ḥarrah until they died'.**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، كِلاَهُمَا عَنْ هُشَيْمٍ (وَاللَّفْظُ لِيَحْيَى) قَالَ أَخْبَرَنَا هُشَيْمٌ، عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ وَحُمَيْدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ نَاسًا مِنْ عُرَيْنَةَ قَدِمُوا عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ، فَاجْتَوَوْهَا. فَقَالَ لَهُمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنْ شِئْتُمْ أَنْ تَخْرُجُوا إِلَى إِبِلِ الصَّدَقَةِ، فَتَشْرَبُوا مِنْ أَلْبَانِهَا

وَأَبْوَالِهَا». فَفَعَلُوا، فَصَحُّوا. ثُمَّ مَالُوا عَلَى الرِّعَاءِ فَقَتَلُوهُمْ. وَارْتَدُّوا عَنِ الإِسْلاَمِ، وَسَاقُوا ذَوْدَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَبَلَغَ ذَلِكَ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَبَعَثَ فِي أَثْرِهِمْ. فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَتَرَكَهُمْ فِي الْحَرَّةِ حَتَّى مَاتُوا.

[3810–10]. (Dar al-Salam 4131) Abu Jaʿfar Muhammad ibn al-Ṣabbāḥ and Abu Bakr ibn Abi Shaybah narrated (Abu Bakr's text):[i] he said: Ibn ʿUlayyah narrated; from Ḥajjāj ibn Abi ʿUthmān; Abu Rajā', Abu Qilābah's *mawlā*; from Abu Qilābah; Anas narrated to me that **'A group from ʿUkl, eight in number, came to God's Messenger (peace be upon him) and pledged their allegiance as Muslims. The [Madīnah] environment did not suit them, and they felt poorly. They complained of this to God's Messenger and he said: "Would you like to go with our shepherd and his camels, and you may use their milk and urine?" They said: "Yes". They went out and drank camel milk and urine. They were soon in good health. They killed the shepherd and drove away with the camels. God's Messenger was informed, and he sent some people to chase them. They caught up with them and brought them back. He gave instructions to cut their hands and feet and put out their eyes. They then were abandoned in the sun until they died.'**

In his narration, Ibn al-Ṣabbāḥ said: **'they drove the cattle away', and 'sealed their eyes'.**

حَدَّثَنَا أَبُو جَعْفَرٍ مُحَمَّدُ بْنُ الصَّبَّاحِ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ (وَاللَّفْظُ لأَبِي بَكْرٍ)، قَالَ حَدَّثَنَا ابْنُ عُلَيَّةَ، عَنْ حَجَّاجِ بْنِ أَبِي عُثْمَانَ، حَدَّثَنِي أَبُو رَجَاءٍ مَوْلَى أَبِي قِلاَبَةَ، عَنْ أَبِي قِلاَبَةَ، حَدَّثَنِي أَنَسٌ، أَنَّ نَفَرًا مِنْ عُكْلٍ ثَمَانِيَةً، قَدِمُوا عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَبَايَعُوهُ

عَلَى الإِسْلاَمِ. فَاسْتَوْخَمُوا الأَرْضَ، وَسَقُمَتْ أَجْسَامُهُمْ. فَشَكَوْا ذَلِكَ إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «أَلا تَخْرُجُونَ مَعَ رَاعِينَا فِي إِبِلِهِ، فَتُصِيبُونَ مِنْ أَبْوَالِهَا وَأَلْبَانِهَا». فَقَالُوا: بَلَى. فَخَرَجُوا، فَشَرِبُوا مِنْ أَبْوَالِهَا وَأَلْبَانِهَا، فَصَحُّوا. فَقَتَلُوا الرَّاعِيَ، وَطَرَدُوا الإِبِلَ. فَبَلَغَ ذَلِكَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَبَعَثَ فِي آثَارِهِمْ، فَأُدْرِكُوا. فَجِيءَ بِهِمْ، فَأَمَرَ بِهِمْ فَقُطِعَتْ أَيْدِيهِمْ وَأَرْجُلُهُمْ، وَسُمِرَ أَعْيُنُهُمْ. ثُمَّ نُبِذُوا فِي الشَّمْسِ حَتَّى مَاتُوا. وَقَالَ ابْنُ الصَّبَّاحِ فِي رِوَايَتِهِ: وَاطَّرَدُوا النَّعَمَ. وَقَالَ: وَسُمِّرَتْ أَعْيُنُهُمْ.

[3811–11]. (Dar al-Salam 4132) Hārūn ibn ʿAbdullāh narrated: Sulaymān ibn Ḥarb narrated; Ḥammād ibn Zayd narrated; from Ayyūb; from Abu Rajā', Abu Qilābah's *mawlā*; he said: Abu Qilābah said: Anas ibn Mālik narrated. He said: **'A group of people from ʿUkl or ʿUraynah came to God's Messenger (peace be upon him) and they complained of the [environment of] Madīnah. God's Messenger ordered that they should use milking camels. He instructed them to drink of their milk and urine', adding the same meaning as the hadith narrated by Ḥajjāj ibn Abi ʿUthmān'. He added: 'Their eyes were sealed and they were abandoned at al-Ḥarrah. They sought a drink but were given none'.**

وَحَدَّثَنَا هَارُونُ بْنُ عَبْدِ اللهِ، حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ، حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ أَبِي رَجَاءٍ مَوْلَى أَبِي قِلاَبَةَ قَالَ: قَالَ أَبُو قِلاَبَةَ: حَدَّثَنَا أَنَسُ بْنُ مَالِكٍ قَالَ: قَدِمَ عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَوْمٌ مِنْ عُكْلٍ أَوْ عُرَيْنَةَ، فَاجْتَوَوُا الْـمَدِينَةَ. فَأَمَرَ لَهُمْ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِلِقَاحٍ، وَأَمَرَهُمْ أَنْ يَشْرَبُوا مِنْ أَبْوَالِهَا وَأَلْبَانِهَا. بِمَعْنَى حَدِيثِ حَجَّاجِ بْنِ أَبِي عُثْمَانَ. قَالَ: وَسُمِرَتْ أَعْيُنُهُمْ، وَأُلْقُوا فِي الْحَرَّةِ، يَسْتَسْقُونَ فَلاَ يُسْقَوْنَ.

[3812–12]. (Dar al-Salam 4133) Muhammad ibn al-Muthannā narrated: Muʿādh ibn Muʿādh narrated [H]. Also, Ahmad ibn ʿUthmān al-Nawfalī narrated; Azhar al-Sammān narrated; both said: Ibn ʿAwn narrated; Abu Rajā', Abu Qilābah's *mawlā* narrated; from Abu Qilābah. He said: **I was sitting behind ʿUmar ibn ʿAbd al-ʿAzīz when he said to the people: "What do you know about the case of swearers?" ʿAnbasah said: "Anas ibn Mālik narrated such-and-such". I said: "Anas narrated to *me*: A group of people came to the Prophet…" he narrated the hadith in a similar text to the narration of Ayyūb and Ḥajjāj.**

Abu Qilābah said: 'When I finished, ʿAnbasah said: "*Subḥān Allah*, [i.e., Limitless is God in His glory]".' Abu Qilābah said: 'I said: "Are you accusing me, ʿAnbasah?" He said: "No". Anas ibn Mālik narrated this to us: "You, the people of Syria, shall be well as long as this person, or such a person, is among you".'

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنَا مُعَاذُ بْنُ مُعَاذٍ، ح. وَحَدَّثَنَا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ، حَدَّثَنَا أَزْهَرُ السَّمَّانُ قَالا: حَدَّثَنَا ابْنُ عَوْنٍ، حَدَّثَنَا أَبُو رَجَاءٍ مَوْلَى أَبِي قِلاَبَةَ، عَنْ أَبِي قِلاَبَةَ، قَالَ: كُنْتُ جَالِسًا خَلْفَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ لِلنَّاسِ: مَا تَقُولُونَ فِي الْقَسَامَةِ؟ فَقَالَ عَنْبَسَةُ: قَدْ حَدَّثَنَا أَنَسُ بْنُ مَالِكٍ كَذَا وَكَذَا. فَقُلْتُ: إِيَّاىَ حَدَّثَ أَنَسٌ. قَدِمَ عَلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَوْمٌ... وَسَاقَ الْحَدِيثَ بِنَحْوِ حَدِيثِ أَيُّوبَ وَحَجَّاجٍ.

قَالَ أَبُو قِلاَبَةَ: فَلَمَّا فَرَغْتُ قَالَ عَنْبَسَةُ: سُبْحَانَ اللهِ. قَالَ أَبُو قِلاَبَةَ: فَقُلْتُ: أَتَتَّهِمُنِي يَا عَنْبَسَةُ؟ قَالَ: لا، هَكَذَا حَدَّثَنَا أَنَسُ بْنُ مَالِكٍ: لَنْ تَزَالُوا بِخَيْرٍ يَا أَهْلَ الشَّامِ، مَادَامَ فِيكُمْ هَذَا أَوْ مِثْلُ هَذَا.

[3813–000]. (Dar al-Salam 4134) Al-Ḥasan ibn Abi Shuʿayb al-Ḥarrānī narrated: Miskīn (who is Ibn Bukayr al-Ḥarrānī) narrated: al-Awzāʿī reported [H]. Also, ʿAbdullāh ibn ʿAbd al-Raḥmān al-Dārimī narrated; Muhammad ibn Yūsuf reported; from al-Awzāʿī; from Yaḥyā ibn Abi Kathīr; from Abu Qilābah; from Anas ibn Mālik. He said: **'A group of eight people from ʿUkl came to God's Messenger (peace be upon him)…' adding a similar hadith, and added: 'He did not cauterize them'.**

وَحَدَّثَنَا الْحَسَنُ بْنُ أَبِي شُعَيْبٍ الْحَرَّانِيُّ، حَدَّثَنَا مِسْكِينٌ (وَهُوَ ابْنُ بُكَيْرٍ الْحَرَّانِيُّ)، أَخْبَرَنَا الأَوْزَاعِيُّ، ح. وَحَدَّثَنَا عَبْدُ اللهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ، أَخْبَرَنَا مُحَمَّدُ بْنُ يُوسُفَ، عَنِ الأَوْزَاعِيِّ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي قِلاَبَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَدِمَ عَلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ ثَمَانِيَةُ نَفَرٍ مِنْ عُكْلٍ... بِنَحْوِ حَدِيثِهِمْ. وَزَادَ فِي الْحَدِيثِ: وَلَمْ يَحْسِمْهُمْ.

[3814–13]. (Dar al-Salam 4135) Hārūn ibn ʿAbdullāh narrated: Mālik ibn Ismāʿīl narrated; Zuhayr narrated; Simāk ibn Ḥarb narrated; from Muʿāwiyah ibn Qurrah; from Anas. He said: **'A group of people from ʿUraynah came to God's Messenger (peace be upon him) and accepted Islam, pledging their allegiance to him. Madīnah was then afflicted by Mūm (which is Birsām disease)…". He provided a similar narration and added: 'The Prophet had with him nearly twenty young men from the Anṣār, so he sent them in chase. He sent with them an expert to trace their footprints'.**

وَحَدَّثَنَا هَارُونُ بْنُ عَبْدِ اللهِ، حَدَّثَنَا مَالِكُ بْنُ إِسْمَاعِيلَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ، عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ، عَنْ أَنَسٍ قَالَ: أَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَفَرٌ مِنْ عُرَيْنَةَ، فَأَسْلَمُوا وَبَايَعُوهُ. وَقَدْ وَقَعَ بِالْمَدِينَةِ الْمُومُ - وَهُوَ الْبِرْسَامُ. ثُمَّ ذَكَرَ نَحْوَ حَدِيثِهِمْ، وَزَادَ وَعِنْدَهُ شَبَابٌ مِنَ الأَنْصَارِ، قَرِيبٌ مِنْ عِشْرِينَ فَأَرْسَلَهُمْ إِلَيْهِمْ، وَبَعَثَ مَعَهُمْ قَائِفًا يَقْتَصُّ أَثَرَهُمْ.

[3815–000]. (Dar al-Salam 4136) Haddāb ibn Khālid narrated:[ii] Hammām narrated; Qatādah narrated; from Anas [H]. Also, Ibn al-Muthannā narrated; ʿAbd al-Aʿlā narrated; Saʿīd narrated; from Qatādah; from Anas: **a similar text, but in Hammām's narration: 'A group of people from ʿUraynah came to the Prophet', and in Saʿīd's narration: 'from ʿUkl and ʿUraynah'.**

حَدَّثَنَا هَدَّابُ بْنُ خَالِدٍ، حَدَّثَنَا هَمَّامٌ، حَدَّثَنَا قَتَادَةُ، عَنْ أَنَسٍ، ح. وَحَدَّثَنَا ابْنُ الْمُثَنَّى، حَدَّثَنَا عَبْدُ الأَعْلَى، حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ، عَنْ أَنَسٍ. وَفِي حَدِيثِ هَمَّامٍ: قَدِمَ عَلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَهْطٌ مِنْ عُرَيْنَةَ. وَفِي حَدِيثِ سَعِيدٍ مِنْ عُكْلٍ وَعُرَيْنَةَ. بِنَحْوِ حَدِيثِهِمْ.

[3816–14]. (Dar al-Salam 4137) Al-Faḍl ibn Sahl al-Aʿraj narrated to me:[iii] Yaḥyā ibn Ghaylān narrated; Yazīd ibn Zurayʿ narrated; from Sulaymān al-Taymī; from Anas. He said: **'God's Messenger put out those people's eyes because they had put out the shepherds' eyes'.**

وَحَدَّثَنِي الْفَضْلُ بْنُ سَهْلٍ الأَعْرَجُ، حَدَّثَنَا يَحْيَى بْنُ غَيْلاَنَ، حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، عَنْ سُلَيْمَانَ التَّيْمِيِّ، عَنْ أَنَسٍ قَالَ: إِنَّمَا سَمَلَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَعْيُنَ أُولَئِكَ لأَنَّهُمْ سَمَلُوا أَعْيُنَ الرِّعَاءِ.

Text Explanation

In its various versions, the hadith in this chapter serves as the basis laying down the punishment that should be inflicted on bandits who attack peaceful civilians with arms and take their property. This is the crime known in Islamic law as *ḥirābah* which may be defined as armed highway robbery. The hadith is consistent with the Qur'anic verse which says: 'It is but a just punishment of those who make war on God and His Messenger, and endeavour to spread corruption on earth, that they should be put to death, or be crucified, or have their hands and feet cut off on alternate sides or that they should be banished from the land. Such is their disgrace in this world, and more grievous suffering awaits them in the life to come; except those who repent before you overpower them. For you must know that God is much-forgiving, ever-merciful'. (5: 33–34)

Scholars differ in their understanding of this Qur'anic verse. Mālik said that it gives a choice between these punishments it mentions. In other words, the ruler of the Muslim state may choose any of these punishments, unless the bandit has killed some innocent civilian. In this case, the death penalty is obligatory. Abu Ḥanīfah and Abu Muṣʿab al-Mālikī said that the ruler could choose any of the punishments, even though the bandits might have killed. Al-Shāfiʿī and others said the punishments are applied in proportion to the gravity of the crime. If the bandits kill but do not steal their victims' property, they are given the death penalty; if they kill and steal, their punishment is death and crucifixion; if they take away people's property without killing anyone, their hands and feet are cut off; and if they merely scare travellers without taking anything from them, they are chased so that a suitable punishment is enforced against them. This is what is meant by 'banished from the land', according to our Shāfiʿī School. Our scholars say that these actions cause different degrees of harm; therefore, they are punished differently. These rulings are definitely applicable for offences committed on travellers' roads. The question is whether they are

also applicable if committed in urban areas. Abu Ḥanīfah said they are not, but Mālik and al-Shāfiʿī said they are applicable.

Qadi ʿIyāḍ said: ‘Scholars differ in their understanding of this hadith concerning the ʿUraynī people. Some early scholars said that the hadith was before the mandatory punishments and the relevant Qur’anic verse were revealed and before the prohibition of disfigurement was established. As such, the hadith is abrogated. Other scholars said that it is not abrogated, and the Qur’anic verse related to *ḥirābah* was revealed in relation to their case. They maintain that the Prophet inflicted these punishments on them in retaliation, because this was what they did to the shepherds. This is confirmed in some hadiths related by Muslim, and it is also related by Ibn Isḥāq, Mūsā ibn ʿUqbah, al-Tirmidhī and others.

Hadith No. 3811 mentions that those people might ‘seek a drink but were given none’. The hadith does not say that the Prophet ordered that or prohibited giving them a drink. Qadi ʿIyāḍ said that ‘all Muslims agree that a person who incurs the death penalty and asks for a drink is not purposely denied a drink. One punishment must not be added to the other’. May I point out here that this authentic hadith makes clear that those people were apostates who killed the shepherds. As such, they forfeited all claims including a drink of water. Our scholars say that a person who has some water which he needs for his ablution may not give this water to an apostate who fears to die out of thirst and resort to dry ablution, or *tayammum* for his prayer. If the one who is so desperate for a drink is an ordinary non-Muslim or an animal, the water must be given to them to drink. It is not permissible to use it for ablution, but God knows best.

The hadiths mention that those people belonged to the tribe of ʿUraynah, while in some cases they are said to belong to ʿUkl. It seems that some belonged to one tribe and some to the other, and the narrators used one or the other.

In hadith No. 3809, the Prophet told them to go where the ‘charity camels’ were grazing, and in the next hadith he suggests to them to go out

‘with our shepherd and his camels’. In some other anthologies, the camels are described as belonging to the Prophet. Both descriptions are correct: some of the camels were given in zakat and some belonged to the Prophet, and the shepherds looked after both.

The Prophet told those people to drink the camels’ milk and urine. Mālikī and Ḥanbalī scholars take this as evidence supporting their view that the discharges of animals that are permissible to eat are not impure. Our scholars who maintain that they are impure respond saying that the Prophet told them to drink the urine as treatment for their illness. It is permissible to use any impurity for medical treatment, except for alcoholic drinks. Some may ask why the Prophet permited them to drink the milk of charity camels. The answer is that their milk is available to any Muslim who needs it, and at that time those people belonged to this category.

The illness suffered by those people is called in the hadith Mūm or Birsām. Both names are not Arabic. It is described as some swelling in the head or chest, but it appears from other descriptions to be pleurisy.

i. Related by al-Bukhari, 233, 3018 and in longer versions 4193 and 6899, and in similar wording 4610, also 6802, 6803, 6804 and 6805; Abu Dāwūd, 4364, 4365 and 4366; al-Nasā’ī, 4036, 4037, 4038 and 4039.

ii. Related by al-Bukhari, 4192 and in similar versions 572, 3064 and 4090; al-Nasā’ī, 304.

iii. Related by al-Tirmidhī, 73, al-Nasā’ī, 4054.

CHAPTER 3

RETALIATORY PUNISHMENT FOR MANSLAUGHTER

[3817–15]. (Dar al-Salam 4138) Muhammad ibn al-Muthannā and Muhammad ibn Bashshār narrated (Ibn al-Muthannā's text) both said:[i] Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Hishām ibn Zayd; from Anas ibn Mālik that **'A Jew killed a maid to rob her of her silver jewellery. He killed her with a stone. She was brought to the Prophet when she was still conscious. He asked her: "Did this person [seek to] kill you?" She signalled with her head in the negative. He asked her again: "Did that person [seek to] kill you?" She again signalled "no" with her head. He asked her about a third and she indicated "yes", signalling with her head. The Prophet ordered his execution between two stones'.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَمُحَمَّدُ بْنُ بَشَّارٍ، (وَاللَّفْظُ لِابْنِ الْـمُثَنَّى) قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ هِشَامِ بْنِ زَيْدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ يَهُودِيًّا قَتَلَ جَارِيَةً عَلَى أَوْضَاحٍ لَهَا، فَقَتَلَهَا بِحَجَرٍ. قَالَ: فَجِيءَ بِهَا إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَبِهَا رَمَقٌ، فَقَالَ لَهَا: «أَقَتَلَكِ فُلاَنٌ». فَأَشَارَتْ بِرَأْسِهَا أَنْ لا. ثُمَّ قَالَ لَهَا الثَّانِيَةَ، فَأَشَارَتْ بِرَأْسِهَا أَنْ لا. ثُمَّ سَأَلَهَا الثَّالِثَةَ فَقَالَتْ نَعَمْ. وَأَشَارَتْ بِرَأْسِهَا، فَقَتَلَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بَيْنَ حَجَرَيْنِ.

[3818–000]. (Dar al-Salam 4139) Yaḥyā ibn Ḥabīb al-Ḥārithī narrated: Khālid (meaning ibn al-Ḥārith) narrated [H]. Also, Abu Kurayb narrated; Ibn Idrīs narrated; both from Shuʿbah; with the same chain of transmission: **a similar text.**

In Ibn Idrīs's narration: **'His head was crushed between two stones'.**

وَحَدَّثَنِي يَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ، حَدَّثَنَا خَالِدٌ (يَعْنِي ابْنَ الْحَارِثِ)، ح. وَحَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا ابْنُ إِدْرِيسَ، كِلاَهُمَا عَنْ شُعْبَةَ، بِهَذَا الإِسْنَادِ: نَحْوَهُ. وَفِي حَدِيثِ ابْنِ إِدْرِيسَ: فَرَضَخَ رَأْسَهُ بَيْنَ حَجَرَيْنِ.

[3819–16]. (Dar al-Salam 4140–4141) ʿAbd ibn Ḥumayd narrated:[ii] ʿAbd al-Razzāq narrated; Maʿmar reported; from Ayyūb; from Abu Qilābah; from Anas that **'A Jew killed a maid from the Anṣār to take her jewellery, then he threw her in a well and hit her with stones on her head. He was taken and brought to God's Messenger (peace be upon him). He ordered him to be stoned to death. He was stoned until he died'.**

حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلاَبَةَ، عَنْ أَنَسٍ، أَنَّ رَجُلاً مِنَ الْيَهُودِ قَتَلَ جَارِيَةً مِنَ الأَنْصَارِ عَلَى حُلِيٍّ لَهَا، ثُمَّ أَلْقَاهَا فِي الْقَلِيبِ، وَرَضَخَ رَأْسَهَا بِالْحِجَارَةِ. فَأُخِذَ، فَأُتِيَ بِهِ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَأَمَرَ بِهِ أَنْ يُرْجَمَ حَتَّى يَمُوتَ، فَرُجِمَ حَتَّى مَاتَ.

Isḥāq ibn Manṣūr narrated to me: Muhammad ibn Bakr reported; Ibn Jurayj reported; Maʿmar reported to me; from Ayyūb; with the same chain of transmission: **the same text.**

وَحَدَّثَنِي إِسْحَاقُ بْنُ مَنْصُورٍ، أَخْبَرَنَا مُحَمَّدُ بْنُ بَكْرٍ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي مَعْمَرٌ، عَنْ أَيُّوبَ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3820–17]. (Dar al-Salam 4142) Haddāb ibn Khālid narrated:[iii] Hammām narrated; Qatādah narrated; from Anas ibn Mālik that **'A maid was found with her head having been crushed between two stones. They asked her: "Who did this to you? This person? That person?" Then they mentioned a Jew, and she signalled confirmation with her head. The Jew was taken, and he confessed. God's Messenger (peace be upon him) gave instructions that his head be crushed with stones'.**

وَحَدَّثَنَا هَدَّابُ بْنُ خَالِدٍ، حَدَّثَنَا هَمَّامٌ، حَدَّثَنَا قَتَادَةُ، عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ جَارِيَةً وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ. فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلاَنٌ؟ فُلاَنٌ؟ حَتَّى ذَكَرُوا يَهُودِيًّا، فَأَوْمَتْ بِرَأْسِهَا. فَأُخِذَ الْيَهُودِيُّ، فَأَقَرَّ. فَأَمَرَ بِهِ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ.

Text Explanation

The hadiths mention that the Jew was killed by crushing his head between two stones, stoning to death or crushing with stones. These were descriptions of the way the murderer was executed, but they all mean the same: if his head was placed on a stone and another stone was hurled on his head, this means that he was stoned and his head was crushed. The killer appears to have stoned the maid in addition to hitting her head against a stone, because hadith No. 3819 mentions that 'he threw her in a well and hit her with stones on her head'.

In its different versions, the hadith makes several important points. The first is that a man who kills a woman incurs the death penalty. This is unanimously agreed upon by scholars who uphold this hadith. Another point is that a criminal who kills deliberately is executed in retaliation in the same way he committed his crime. If he has killed his victim with a sword, he is executed with a sword, and if he killed with a stone, a wood stick or similar, the same sort of tool is used for his punishment. In this case, the Jew killed the woman by crushing her head, and his head was therefore crushed in retaliation. Further, retaliatory execution is not limited to sharp blades, but weights can be used as well. This is the view of al-Shāfiʿī, Mālik, Ahmad and the great majority of scholars. Abu Ḥanīfah said that retaliatory killing is done only with a blade of iron or stone or wood, or some other way generally known to kill, such as fire. Different reports are mentioned from him concerning using a weight of iron.

If the crime is semi-deliberate, such as by using a tool that is hardly used for killing, for example, a stick, whip, rod, punch or catapult, but with the intention of killing, then according to Mālik and al-Layth, retaliation is due. Al-Shāfiʿī, Abu Ḥanīfah, al-Awzāʿī, al-Thawrī, Ahmad, Isḥāq, Abu Thawr and the majority of scholars among the Prophet's Companions and their successors say that this does not incur retaliatory killing, but God knows best.

Another point is that retaliatory punishment is enforced against an offender who kills a Muslim. Also, it is right to ask the one who is injured to identify the person who caused his injury. The question is asked so that the one who is named can be questioned. If he admits his offence, his punishment becomes due. If he denies it and swears in confirmation that he has not committed the offence, his oath is accepted. The accusation by the injured person is not proof. This is the view of our school and the majority of scholars, as we mentioned in Chapter 1: Swearers. Mālik's view is that the statement by the injured person is sufficient evidence against the accused, who will be punished by death. They take this hadith as evidence

in support of this view, but this is not right, because the accused in this case confessed that he killed the woman, as it is clear in one version of the hadith. He was given the death penalty on the basis of his confession, but God knows best.

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i. Related by al-Bukhari, 5295, 6877 and 6879; Abu Dāwūd, 4529; al-Nasā'ī, 4793; Ibn Mājah, 2666.

ii. Related by Abu Dāwūd, 4528; al-Nasā'ī, 4055 and 4056.

iii. Related by al-Bukhari, 2413, 6876, 6884 and in a longer version 2746; Abu Dāwūd, 4527; al-Tirmidhī, 1394; al-Nasā'ī in a longer version, 4756.

CHAPTER 4

NO INDEMNITY FOR INJURY CAUSED IN DEFENDING ONESELF

[3821–18]. (Dar al-Salam 4143–4144) Muhammad ibn al-Muthannā and Muhammad ibn Bashshār narrated, both said:[i] Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Qatādah; from Zurārah; from ʿImrān ibn Ḥuṣayn. He said: **‘Yaʿlā ibn Munyah, or Ibn Umayyah, fought someone. One of them bit the other and the latter pulled his arm from the other’s mouth, causing the loss of his front tooth (Ibn al-Muthannā said: two teeth). They put their dispute to the Prophet who said: “Would any of you bite like a camel? He gets no indemnity”.’**

حَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنْ زُرَارَةَ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ: قَاتَلَ يَعْلَى ابْنُ مُنْيَةَ، أَوِ ابْنُ أُمَيَّةَ، رَجُلاً. فَعَضَّ أَحَدُهُمَا صَاحِبَهُ، فَانْتَزَعَ يَدَهُ مِنْ فَمِهِ، فَنَزَعَ ثَنِيَّتَهُ - وَقَالَ ابْنُ الْـمُثَنَّى ثَنِيَّتَيْهِ - فَاخْتَصَمَا إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: «أَيَعَضُّ أَحَدُكُمْ كَمَا يَعَضُّ الْفَحْلُ؟ لا دِيَةَ لَهُ».

Muhammad ibn al-Muthannā and Muhammad ibn Bashshār narrated, both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Qatādah; from ʿAṭā’; from Ibn Yaʿlā; from Yaʿlā; from the Prophet: **the same text.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ قَتَادَةَ، عَنْ عَطَاءٍ، عَنِ ابْنِ يَعْلَى، عَنْ يَعْلَى، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ.

[3822–19]. (Dar al-Salam 4145) Abu Ghassān al-Mismaʿī narrated to me: Muʿādh (meaning Ibn Hishām) narrated; my father narrated to me; from Qatādah; from Zurārah ibn Awfā; from ʿImrān ibn Ḥuṣayn that **‘One man bit the arm of another, and he pulled out his arm causing the loss of the other’s front tooth. He complained to the Prophet but the Prophet rejected the claim saying: “You wanted to eat his flesh?”.’**

حَدَّثَنِي أَبُو غَسَّانَ الْـمِسْمَعِيُّ، حَدَّثَنَا مُعَاذٌ (يَعْنِي ابْنَ هِشَامٍ)، حَدَّثَنِي أَبِي، عَنْ قَتَادَةَ، عَنْ زُرَارَةَ بْنِ أَوْفَى، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ، أَنَّ رَجُلاً عَضَّ ذِرَاعَ رَجُلٍ، فَجَذَبَهُ فَسَقَطَتْ ثَنِيَّتُهُ. فَرُفِعَ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَأَبْطَلَهُ وَقَالَ: «أَرَدْتَ أَنْ تَأْكُلَ لَحْمَهُ».

[3823–20]. (Dar al-Salam 4146) Abu Ghassān al-Mismaʿī narrated to me: Muʿādh ibn Hishām narrated; my father narrated to me; from Qatādah; from Budayl; from ʿAṭā’ ibn Abi Rabāḥ; from Ṣafwān ibn Yaʿlā; that **‘A man hired by Yaʿlā ibn Munyah was bitten in his arm by a man. He pulled it out and the man’s front tooth fell off. He complained to the Prophet (peace be upon him) but the Prophet rejected the claim saying: “You wanted to bite it off like a camel?”.’**

حَدَّثَنِي أَبُو غَسَّانَ الْـمِسْمَعِيُّ، حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ، حَدَّثَنِي أَبِي، عَنْ قَتَادَةَ، عَنْ بُدَيْلٍ، عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، عَنْ صَفْوَانَ بْنِ يَعْلَى، أَنَّ أَجِيرًا لِيَعْلَى ابْنِ مُنْيَةَ عَضَّ رَجُلٌ ذِرَاعَهُ،

فَجَذَبَهَا، فَسَقَطَتْ ثَنِيَّتُهُ. فَرُفِعَ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَأَبْطَلَهَا، وَقَالَ: «أَرَدْتَ أَنْ تَقْضَمَهَا كَمَا يَقْضَمُ الْفَحْلُ».

[3824–21]. (Dar al-Salam 4147) Ahmad ibn ʿUthmān al-Nawfalī narrated:[ii] Quraysh ibn Anas narrated; from Ibn ʿAwn; from Muhammad ibn Sīrīn; from ʿImrān ibn Ḥuṣayn; that **‘One man bit the arm of another. As he pulled his arm away, the man’s front tooth or two teeth fell out. He complained to God’s Messenger (peace be upon him) who said: “What are you asking me? Are you asking me to order him to leave his arm in your mouth for you to bite off like a camel? Offer him your arm so that he bites it and then pull it away”.’**

حَدَّثَنَا أَحْمَدُ بْنُ عُثْمَانَ النَّوْفَلِيُّ، حَدَّثَنَا قُرَيْشُ بْنُ أَنَسٍ، عَنِ ابْنِ عَوْنٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ، أَنَّ رَجُلاً عَضَّ يَدَ رَجُلٍ، فَانْتَزَعَ يَدَهُ، فَسَقَطَتْ ثَنِيَّتُهُ أَوْ ثَنَايَاهُ. فَاسْتَعْدَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَا تَأْمُرُنِي؟ تَأْمُرُنِي أَنْ آمُرَهُ أَنْ يَدَعَ يَدَهُ فِي فِيكَ تَقْضَمُهَا كَمَا يَقْضَمُ الْفَحْلُ؟ ادْفَعْ يَدَكَ حَتَّى يَعَضَّهَا ثُمَّ انْتَزِعْهَا».

[3825–22]. (Dar al-Salam 4148) Shaybān ibn Farrūkh narrated: Hammām narrated; ʿAṭā’ narrated; from Ṣafwān ibn Yaʿlā ibn Munyah; from his father. He said: **‘A man came to the Prophet (peace be upon him). He had bitten someone’s arm and he [the victim] pulled his arm away. His (i.e., the biting man’s) front two teeth fell out. The Prophet dismissed the claim, saying [to the claimant]: “You wanted to bite it off like a camel”.’**

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ، حَدَّثَنَا هَمَّامٌ، حَدَّثَنَا عَطَاءٌ، عَنْ صَفْوَانَ بْنِ يَعْلَى ابْنِ مُنْيَةَ، عَنْ أَبِيهِ قَالَ: أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ، وَقَدْ عَضَّ يَدَ رَجُلٍ، فَانْتَزَعَ يَدَهُ فَسَقَطَتْ ثَنِيَّتَاهُ (يَعْنِي الَّذِي عَضَّهُ). قَالَ: فَأَبْطَلَهَا النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَقَالَ: «أَرَدْتَ أَنْ تَقْضَمَهُ كَمَا يَقْضَمُ الْفَحْلُ».

[3826–23]. (Dar al-Salam 4149–4150) Abu Bakr ibn Abi Shaybah narrated: Abu Usāmah narrated; Ibn Jurayj reported; ʿAṭā’ reported to me; Ṣafwān ibn Yaʿlā ibn Umayyah reported to me; from his father. He said: **‘I joined the Prophet (peace be upon him) on the Tabuk Expedition. (Yaʿlā used to say: To me, that expedition is my best deed.) ʿAṭā’ said: Ṣafwān said: Yaʿlā said: “I hired a man and he fought with another. One of them bit the other’s arm (Ṣafwān told me who bit whom). The bitten man pulled his arm away from the other’s mouth, felling off one of his two front teeth. They put the matter to the Prophet, and he dismissed the claim”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَبُو أُسَامَةَ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي عَطَاءٌ، أَخْبَرَنِي صَفْوَانُ بْنُ يَعْلَى بْنِ أُمَيَّةَ، عَنْ أَبِيهِ قَالَ: غَزَوْتُ مَعَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ غَزْوَةَ تَبُوكَ. قَالَ: وَكَانَ يَعْلَى يَقُولُ تِلْكَ الْغَزْوَةُ أَوْثَقُ عَمَلِي عِنْدِي. فَقَالَ عَطَاءٌ، قَالَ صَفْوَانُ، قَالَ يَعْلَى: كَانَ لِي أَجِيرٌ، فَقَاتَلَ إِنْسَانًا فَعَضَّ أَحَدُهُمَا يَدَ الآخَرِ. قَالَ: لَقَدْ أَخْبَرَنِي صَفْوَانُ أَيُّهُمَا عَضَّ الآخَرَ. فَانْتَزَعَ الْـمَعْضُوضُ يَدَهُ مِنْ فِي الْعَاضِّ، فَانْتَزَعَ إِحْدَى ثَنِيَّتَيْهِ. فَأَتَيَا النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَأَهْدَرَ ثَنِيَّتَهُ.

ʿAmr ibn Zurārah narrated: Ismāʿīl ibn Ibrāhīm reported; Ibn Jurayj reported; with the same chain of transmission: **a similar text.**

وَحَدَّثَنَاهُ عَمْرُو بْنُ زُرَارَةَ، أَخْبَرَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ، قَالَ أَخْبَرَنَا ابْنُ جُرَيْجٍ، بِهَذَا الإِسْنَادِ: نَحْوَهُ.

Text Explanation

Hadith No. 3821 mentions the case of ‘Yaʿlā ibn Munyah, or Yaʿlā ibn Umayyah’. Munyah was Yaʿlā’s mother or grandmother, and Umayyah was his father. Therefore, Yaʿlā could be described as the son of either Munyah or Umayyah, as his name occurs in these hadiths. In this hadith, Yaʿlā is said to have been bitten, while in Hadiths No. 3823 and No. 3826 it was someone working for him. Scrupulous hadith scholars say that what has been memorized by most scholars is that Yaʿlā’s hired man was the one who was bitten. However, the hadiths may be understood to refer to two separate incidents involving both Yaʿlā and his man, bitten on the same occasion or on two different occasions.

When the case is put to the Prophet (peace be upon him) he expresses his disapproval by saying: ‘Would any of you bite like a camel’. This is an indication that such biting is forbidden. The hadith makes clear that if one person bites the arm of another and the bitten person pulls his hand away causing the teeth of the one biting him to fall out or his lower jaw to be dislocated, he is not liable to pay any indemnity. This is the view of al-Shāfiʿī, Abu Ḥanīfah and most scholars. Mālik said that he incurs an indemnity.

In hadith No. 3824, the Prophet asks the man who put the complaint to him: ‘What are you asking me? Are you asking me to order him to leave his arm in your mouth for you to bite off like a camel? Offer him your arm so that he bites it and then pull it away’. The last sentence is not an order to the man to give the other his arm to bite. It expresses the Prophet’s disapproval of the complaint. He is saying to the man: you would not put your arm in that man’s mouth so that he can bite it, so how can you complain that he

pulled his arm away when you bit him? How can you seek an indemnity for what happened when he pulled his arm away?

Transmission

This hadith is questioned by al-Dāraquṭnī with regard to its chains of transmission. He mentioned first hadith No. 3821 which includes in its transmission 'Shuʿbah from Qatādah, from Zurārah, from ʿImrān ibn Ḥuṣayn' and the next one including 'Muʿādh ibn Hishām from his father from Qatādah'. He then adds the other chains of transmission:

- Shuʿbah from Qatādah from ʿAṭā'; from Ibn Yaʿlā.
- Hammām from ʿAṭā' from Ibn Yaʿlā.
- Ibn Jurayj from ʿAṭā' from Ibn Yaʿlā.
- Muʿādh from his father from Qatādah from Budayl from ʿAṭā' from Ṣafwān ibn Yaʿlā.

All this indicates difference concerning the reporting from ʿAṭā'. Al-Dāraquṭnī then mentions hadith No. 8,324 with its chain of transmission including: 'Quraysh ibn Anas from Ibn ʿAwn from Ibn Sīrīn from ʿImrān'. In this chain there is no clear statement of listening to the hadith being narrated by Ibn ʿAwn, nor that Ibn Sīrīn heard it from ʿImrān. He further adds that al-Bukhari does not relate any hadith in which Ibn Sīrīn narrates directly from ʿImrān ibn Ḥuṣayn.

In response I say that these two points raised by al-Dāraquṭnī are not valid. The fact that there are differences in reporting from ʿAṭā' does not mean that the hadith is lacking in authenticity. Nor does the fact that Ibn Sīrīn does not specifically mention that he listened to the hadith being narrated by ʿImrān, or that al-Bukhari does not relate any hadith by Ibn Sīrīn from ʿImran, mean that he did not listen to him. In fact Ibn Sīrīn is considered as having heard hadiths from ʿImrān ibn Ḥuṣayn. Besides, even if this particular chain of transmission is 'weak', it does not mean that the

text of the hadith is lacking in authenticity because the other chains of transmission mentioned by Muslim confirm that it is authentic. We have mentioned on several occasions that Muslim may cite in his endorsements hadiths that do not fully meet his conditions of authenticity. But God knows best.

i. Related by al-Bukhari, 6892, 6893 and in longer versions 2265, 2973 and 4417; Abu Dāwūd, 4584; al-Tirmidhī, 14,16; al-Nasā'ī, 4773, 4774, 4775, 4776 and also, 4780–4,785; Ibn Mājah, 2657.

ii. Related by al-Nasā'ī, 4772.

CHAPTER 5

RETALIATORY PUNISHMENT FOR TOOTH BREAKING

[3827–24]. (Dar al-Salam 4151) Abu Bakr ibn Abi Shaybah narrated:[i] ʿAffān ibn Muslim narrated; Ḥammād narrated; Thābit reported; from Anas; that **'Umm Ḥārithah, al-Rubayyiʿ's sister, injured someone. They complained to the Prophet (peace be upon him). He said: "Retaliation is due; retaliation is due". Umm al-Rabīʿ said: "Messenger of God, would retaliation be enforced against this one. By God, no such retaliation will be done". The Prophet said: "Limitless is God in His glory. Umm al-Rabīʿ, retaliation is prescribed in God's Book". She said: "No. By God, she will never suffer a retaliatory punishment". She persisted until the people accepted indemnity. God's Messenger then said: "Among God's servants are some who may swear by God and He will honour their oaths".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَفَّانُ بْنُ مُسْلِمٍ، حَدَّثَنَا حَمَّادٌ، أَخْبَرَنَا ثَابِتٌ، عَنْ أَنَسٍ، أَنَّ أُخْتَ الرُّبَيِّعِ أُمَّ حَارِثَةَ جَرَحَتْ إِنْسَانًا. فَاخْتَصَمُوا إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الْقِصَاصَ، الْقِصَاصَ». فَقَالَتْ أُمُّ الرَّبِيعِ: يَا رَسُولَ اللهِ، أَيُقْتَصُّ مِنْ فُلاَنَةَ؟ وَاللهِ لاَ يُقْتَصُّ مِنْهَا. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «سُبْحَانَ اللهِ يَا أُمَّ

الرَّبِيعِ، الْقِصَاصُ كِتَابُ اللهِ». قَالَتْ: لا، وَاللهِ لا يُقْتَصُّ مِنْهَا أَبَدًا. قَالَ: فَمَا زَالَتْ حَتَّى قَبِلُوا الدِّيَةَ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ مِنْ عِبَادِ اللهِ مَنْ لَوْ أَقْسَمَ عَلَى اللهِ لأَبَرَّهُ».

Text Explanation

This is how the hadith is related by Muslim. Al-Bukhari's version is different, and it is as follows: 'Anas reported that al-Rubayyiʿ, his paternal aunt, broke the front teeth of a maid. They asked the maid to pardon her, but the maid's people refused. They offered them indemnity, but they refused. They went with their complaint to the Prophet insisting on the enforcement of a retaliatory punishment. The Prophet then ordered retaliatory punishment. Anas ibn al-Naḍr said: '"Messenger of God, will al-Rubayyiʿ's front teeth be broken? No, by Him who has sent you with the message of the truth, her front teeth shall not be broken". God's Messenger said: "Anas, God's Book specifies retaliation". However, the other people changed their mind and they pardoned her. The Prophet commented saying: "Among God's servants are some who may swear by God and He will honour their oaths".'

The difference between the two versions is in two points. The first is that in Muslim's version, the offender is al-Rubayyiʿ's sister, while in al-Bukhari's version she is al-Rubayyiʿ herself. The other point of difference is that Muslim reports that the one who swore that retaliatory punishment would not be enforced was Umm al-Rabīʿ, while in al-Bukhari's version it is Anas ibn al-Naḍr. Scholars say that al-Bukhari's version is the better known one, and he related it through authentic chains of transmission, as did the authors of the *Sunan* anthologies. My view is that these are two different cases.

When the case was put to the Prophet, he said: 'Retaliation is due', then he said that it is prescribed in God's Book, referring to the Qur'anic verse which mentions, 'a tooth for a tooth'. In this hadith, Umm al-Rabīʿ said:

‘By God, no such retaliation will be done’. This is also expressed by Anas ibn al-Naḍr in al-Bukhari’s version. It does not mean to reject the Prophet’s ruling. It is merely to express an appeal to the people who are entitled to have such punishment inflicted to pardon the offender, and perhaps an appeal to the Prophet to make an intercession on their behalf. They express this in an oath to show that they trust that the other people will not cause their oath to be broken. They may also have meant it as an expression of their trust that God will extend a favour to them honouring their oath through inspiring the other people to pardon the woman who caused the break of the maid’s tooth.

The Prophet comments on the development of the case when the people gave their pardon, saying: ‘Among God’s servants are some who may swear by God and He will honour their oaths’. He means that such servants of God are so dear to Him that He would not let their oath be broken.

The hadith includes several useful points, such as the permissibility of saying an oath concerning what a person thinks, rather than what is certain. It is permissible to praise someone if it does not lead to self-admiration by the praised one. We explained this on more than one occasion. Another point is the desirability to forgo retaliatory punishment, and to intercede with the one who is owed such punishment so that he or she forgoes it. Also, the hadith shows that the choice between a retaliatory punishment and blood money is given to the one who is owed such punishment, not to the one against whom it is enforceable.

A further point is the confirmation of retaliatory punishment between a man and woman. There are three views on this point. The first is that expressed by ʿAṭā’ and al-Ḥasan which denies such punishment between them, whether the offence is one of manslaughter or injury. Rather, blood money or indemnity is due. This is based on the Qur’anic statement, ‘a female for a female’. The second view expressed by the majority of scholars in the early and later generations confirming the retaliatory punishment between man and woman, whether the case is one of

manslaughter or a lesser offence. This is based on the verse that says: ‘We decreed for them in it: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and a similar retribution for wounds. But for him who forgoes it out of charity, it will atone for some of his sins’. (5: 45) The verse mentions God’s law in the Torah, i.e., for the earlier community. Whether it is applicable to us under Islam or not is subject to a well-known controversy among scholars of legal theory. However, this controversy is specifically concerned with such matters that are not endorsed by Islamic law. In this case, such endorsement is stated in this hadith, but God knows best.

The third view is expressed by Abu Ḥanīfah and his disciples, stating that retaliatory punishment between a man and woman is due only with regard to life, i.e., in a case of manslaughter. It is not due in any lesser offence.

Another point is that retaliatory punishment is due concerning teeth. This is unanimously agreed if the case is one where all the victim’s teeth are broken. If only some of them are broken, the matter is subject to different views by scholars, as also in the case of breaking any bones. The majority of scholars, however, are of the view that retaliation does not apply, but God knows best.

i. Related by al-Nasā’ī, 4769.

CHAPTER 6

WHAT INCURS THE DEATH PENALTY

[3828–25]. (Dar al-Salam 4152–4153) Abu Bakr ibn Abi Shaybah narrated:[i] Ḥafṣ ibn Ghiyāth, Abu Muʿāwiyah and Wakīʿ narrated; from al-Aʿmash; from ʿAbdullāh ibn Murrah; from Masrūq; from ʿAbdullāh. He said: **'God's Messenger (peace be upon him) said: "It is not permissible to shed the blood of a Muslim who bears witness that there is no deity other than God and that I am God's Messenger, except for one of three [offences]: a married adulterer, a life for a life and the one who abandons his faith and breaks away from the community".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ، وَأَبُو مُعَاوِيَةَ، وَوَكِيعٌ، عَنِ الأَعْمَشِ، عَنْ عَبْدِ اللهِ بْنِ مُرَّةَ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللهِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لا إِلَهَ إِلاَّ اللهُ وَأَنِّي رَسُولُ اللهِ إِلاَّ بِإِحْدَى ثَلاَثٍ: الثَّيِّبُ الزَّانِ، وَالنَّفْسُ بِالنَّفْسِ، وَالتَّارِكُ لِدِينِهِ الْـمُفَارِقُ لِلْجَمَاعَةِ».

Ibn Numayr narrated: my father narrated [H]. Also, Ibn Abi ʿUmar narrated; Sufyān narrated [H]. And, Isḥāq ibn Ibrāhīm and ʿAlī ibn Khashram narrated; both said ʿĪsā ibn Yūnus reported; all from al-Aʿmash; with this chain of transmission: **the same text.**

حَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي ح. وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَلِيُّ بْنُ خَشْرَمٍ، قَالا: أَخْبَرَنَا عِيسَى بْنُ يُونُسَ، كُلُّهُمْ عَنِ الأَعْمَشِ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3829–26]. (Dar al-Salam 4154) Ahmad ibn Ḥanbal and Muhammad ibn al-Muthannā narrated (Ahmad's text) both said: ʿAbd al-Raḥmān ibn Mahdī narrated; from Sufyān; from al-Aʿmash; from ʿAbdullāh ibn Murrah; from Masrūq; from ʿAbdullāh. He said: **'God's Messenger stood and addressed us. He said: "By Him other than whom there is no deity, it is not permissible to shed the blood of a Muslim person who bears witness that there is no deity other than God and that I am God's Messenger except in three cases: the one who abandons Islam breaking away from the community, or breaking with the community (Ahmad's doubt as to the exact wording), a married adulterer and a life for a life".'**

Al-Aʿmash said: **'I narrated it to Ibrāhīm and he narrated to me from al-Aswad, from ʿĀ'ishah…' the same text.**

حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، (وَاللَّفْظُ لأَحْمَدَ) قَالا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ سُفْيَانَ، عَنِ الأَعْمَشِ، عَنْ عَبْدِ اللهِ بْنِ مُرَّةَ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللهِ قَالَ: قَامَ فِينَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «وَالَّذِي لا إِلَهَ غَيْرُهُ، لا يَحِلُّ دَمُ رَجُلٍ مُسْلِمٍ، يَشْهَدُ أَنْ لاَ إِلَهَ إِلاَّ اللهُ وَأَنِّي رَسُولُ اللهِ، إِلاَّ ثَلاَثَةُ نَفَرٍ: التَّارِكُ الإِسْلاَمَ الْمُفَارِقُ لِلْجَمَاعَةِ، أَوِ الْجَمَاعَةَ - شَكَّ فِيهِ أَحْمَدُ - وَالثَّيِّبُ الزَّانِي، وَالنَّفْسُ بِالنَّفْسِ».

قَالَ الأَعْمَشُ: فَحَدَّثْتُ بِهِ إِبْرَاهِيمَ، فَحَدَّثَنِي عَنِ الأَسْوَدِ، عَنْ عَائِشَةَ، بِمِثْلِهِ.

[3830–000]. (Dar al-Salam 4155) Ḥajjāj ibn al-Shāʿir and al-Qāsim ibn Zakariyyā’ narrated to me:[ii] both said: ʿUbaydullāh ibn Mūsā narrated; from Shaybān; from al-Aʿmash; with both chains of transmission: **a similar text to the narration by Sufyān, but they did not mention: ‘By Him other than whom there is no deity’.**

وَحَدَّثَنِي حَجَّاجُ بْنُ الشَّاعِرِ، وَالْقَاسِمُ بْنُ زَكَرِيَّاءَ، قَالا: حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُوسَى، عَنْ شَيْبَانَ، عَنِ الأَعْمَشِ، بِالإِسْنَادَيْنِ جَمِيعًا: نَحْوَ حَدِيثِ سُفْيَانَ. وَلَمْ يَذْكُرَا فِي الْحَدِيثِ قَوْلَهُ: «وَالَّذِي لاَ إِلَهَ غَيْرُهُ».

Text Explanation

This hadith confirms the capital punishment of a married adulterer, and what is meant is stoning to death, as generally agreed by Muslims. We will explain this and the conditions under which this punishment is to be inflicted in the relevant chapter, God willing.

In both versions of this hadith, the Prophet states that the second offence: ‘a life for a life’. This refers to the punishment of someone who kills another, and there are certain conditions that must be considered. Abu Ḥanīfah’s disciples may cite this hadith as evidence confirming their view that a Muslim may be punished by death if he kills a non-Muslim, and a free man may be killed for killing a slave. The majority of scholars, including Mālik, al-Shāfiʿī, al-Layth and Ahmad, disagree with them on this point.

The third case in which the death penalty applies is that of ‘the one who abandons his faith and breaks away from the community’. This is a general statement applicable to every apostate, whatever his type of apostasy may be. He incurs the death punishment unless he re-embraces Islam. Scholars say that it also applies to everyone who breaks away with the community,

embracing a deviant belief or taking a hostile action against the Muslim community, and also the Khawārij, but God knows best.

It should be borne in mind that this hadith is general in its expression. Therefore, an armed aggressor is excepted. He may be killed in self-defence. It may be said that such an aggressor is included under ‘breaking away from the community’. Alternatively, it may mean that it is not permissible to deliberately kill him except in these three cases, but God knows best.

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i. Related by al-Bukhari, 6878; Abu Dāwūd, 4352; al-Tirmidhī, 1402; al-Nasā’ī, 4027 and 4735; Ibn Mājah, 2534.

ii. Related by al-Nasā’ī, 4028.

CHAPTER 7

THE SIN OF THE FIRST KILLER

[3831–27]. (Dar al-Salam 4156) Abu Bakr ibn Abi Shaybah and Muhammad ibn ʿAbdullāh ibn Numayr narrated (Ibn Abi Shaybah's text) both said:[i] Abu Muʿāwiyah narrated; from al-Aʿmash; from ʿAbdullāh ibn Murrah; from Masrūq; from ʿAbdullāh. He said: **'God's Messenger (peace be upon him) said: "Whenever someone is wrongfully killed, the first son of Adam bears a share of this sinful action for being the first who started murder".'**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ (وَاللَّفْظُ لِابْنِ أَبِي شَيْبَةَ) قَالا: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ عَبْدِ اللهِ بْنِ مُرَّةَ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللهِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لا تُقْتَلُ نَفْسٌ ظُلْمًا إِلاَّ كَانَ عَلَى ابْنِ آدَمَ الأَوَّلِ كِفْلٌ مِنْ دَمِهَا، لأَنَّهُ كَانَ أَوَّلَ مَنْ سَنَّ الْقَتْلَ».

[3832–000]. (Dar al-Salam 4157) ʿUthmān ibn Abi Shaybah narrated: Jarīr narrated [H]. Also, Isḥāq ibn Ibrāhīm narrated; Jarīr and ʿĪsā ibn Yūnus reported [H]. And, Ibn Abi ʿUmar narrated; Sufayān narrated; all from al-Aʿmash; with the same chain of transmission: **the same text, but in Jarīr's and ʿĪsā ibn Yunus's: 'for starting murder' without mentioning being 'the first'.**

وَحَدَّثَنَاهُ عُثْمَانُ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا جَرِيرٌ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا جَرِيرٌ، وَعِيسَى بْنُ يُونُسَ، ح. وَحَدَّثَنَا ابْنُ أَبِي عُمَرَ، حَدَّثَنَا سُفْيَانُ، كُلُّهُمْ عَنِ الأَعْمَشِ، بِهَذَا الإِسْنَادِ. وَفِي حَدِيثِ جَرِيرٍ وَعِيسَى بْنِ يُونُسَ: «لأَنَّهُ سَنَّ الْقَتْلَ». لَمْ يَذْكُرَا: أَوَّلَ.

Text Explanation

This hadith states a main Islamic rule which says that when a person starts some evil action, he will bear a similar burden to that of everyone who emulates him in that evil, right up to the Day of Judgement. By contrast, whoever starts some good action earns a similar reward to that of everyone who emulates him in doing such good, up to the Day of Judgement. This agrees fully with similar authentic hadiths, such as: ‘Whoever starts a good practice will be credited with its reward and the reward of everyone who follows it until the Day of Judgement, and whoever starts an evil practice will bear its burden and the burden of everyone who follows it until the Day of Judgement’. ‘Whoever points out some good action earns the same reward as the one who does it’. ‘Whoever calls for something right… and whoever calls for some evil…’, but God knows best.

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i. Related by al-Bukhari, 3335, 7321 and in a shorter version, 6876; al-Tirmidhī, 2673; al-Nasā’ī, 3996; Ibn Mājah, 2616.

CHAPTER 8

FIRST CASES TO SETTLE ON THE DAY OF JUDGEMENT

[3833–28]. (Dar al-Salam 4158) ʿUthmān ibn Abi Shaybah, Isḥāq ibn Ibrāhīm and Muhammad ibn ʿAbdullāh ibn Numayr narrated:[i] all from Wakīʿ; from al-Aʿmash [H]. Also, Abu Bakr ibn Abi Shaybah narrated; ʿAbdah ibn Sulaymān and Wakīʿ narrated; from al-Aʿmash; from Abu Wā'il; from ʿAbdullāh. He said: **'God's Messenger (peace be upon him) said: "Bloodshed is the first to be judged between people on the Day of Judgement".'**

حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، جَمِيعًا عَنْ وَكِيعٍ، عَنِ الأَعْمَشِ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، وَوَكِيعٌ، عَنِ الأَعْمَشِ، عَنْ أَبِي وَائِلٍ، عَنْ عَبْدِ اللهِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ يَوْمَ الْقِيَامَةِ فِي الدِّمَاءِ».

[3834–000]. (Dar al-Salam 4159) ʿUbaydullāh ibn Muʿādh narrated: my father narrated [H]. Also, Yaḥyā ibn Ḥabīb narrated to me; Khālid (meaning Ibn al-Ḥārith) narrated [H]. And, Bishr ibn Khālid narrated to me; Muhammad ibn Jaʿfar narrated [H]. Further, Ibn al-Muthannā and Ibn Bashshār narrated: both said: Ibn Abi ʿAdiy narrated; all of them from Shuʿbah; from al-Aʿmash; from Abu Wā'il; from ʿAbdullāh; from the Prophet (peace be upon him):

the same text. However, reporting from Shuʿbah, some of them said: ‘to be judged’, while others said: ‘to be ruled upon’.

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ، حَدَّثَنَا أَبِي ح. وَحَدَّثَنِي يَحْيَى بْنُ حَبِيبٍ، حَدَّثَنَا خَالِدٌ (يَعْنِي ابْنَ الْحَارِثِ) ح. وَحَدَّثَنِي بِشْرُ بْنُ خَالِدٍ، حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، ح. وَحَدَّثَنَا ابْنُ الْمُثَنَّى وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ، كُلُّهُمْ عَنْ شُعْبَةَ، عَنِ الأَعْمَشِ، عَنْ أَبِي وَائِلٍ، عَنْ عَبْدِ اللهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: بِمِثْلِهِ. غَيْرَ أَنَّ بَعْضَهُمْ قَالَ عَنْ شُعْبَةَ: «يُقْضَى»، وَبَعْضُهُمْ قَالَ: «يُحْكَمُ بَيْنَ النَّاسِ».

Text Explanation

This hadith highlights the gravity of killing any person. It states that the cases of killing and shedding blood are the first to be ruled upon on the Day of Judgement because they are the most serious of disputes.

This hadith does not contradict the other well-known hadith which says that: ‘The first thing a servant of God is held accountable for on the Day of Judgement is his prayers’. This hadith is concerned with a person’s relation with God. The hadith in this chapter is concerned with relations between people, but God knows best.

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i. Related by al-Bukhari, 6533 and 6864; al-Tirmidhī, 1396 and 1397; al-Nasā’ī, 4003, 4004, 4005 and 4007; Ibn Mājah, 2615.

CHAPTER 9

OFFENCES AGAINST LIFE, HONOUR AND PROPERTY

[3835–29]. (Dar al-Salam 4160) Abu Bakr ibn Abi Shaybah and Yaḥyā ibn Ḥabīb al-Ḥārithī narrated (with similar wording):[i] both said: ʿAbd al-Wahhāb al-Thaqafī narrated; from Ayyūb; from Ibn Sīrīn; from Ibn Abi Bakrah; from Abu Bakrah; from the Prophet (peace be upon him) that **'He said: "Time has turned back to its [original] form when God created the heavens and the earth. The year is twelve months, four of which are sacred: three consecutive ones: Dhul-Qaʿdah, Dhul-Ḥijjah, al-Muḥarram and Rajab, which is Muḍar's month the one between Jumādā and Shaʿbān". He then said: "Which month is this?" We said: "God and His Messenger know better". He remained silent until we thought that he would give it a different name. He said: "Is it not Dhul-Ḥijjah?" We said: "Indeed". He asked: "Which city is this?" We said: "God and His Messenger know better". He remained silent until we thought he would give it a different name. He asked: "Is it not the City?" We said: "Indeed". He asked: "Which day is this?" We said: "God and His Messenger know better". He remained silent until we thought he would give it a different name. He asked: "Is it not the Day of Sacrifice?" We said: "Indeed, Messenger of God".**

He said: “Your blood and your property (Muhammad said: and I think he said) and your honour are forbidden for you in the same way as the sanctity of this day of yours in this city of yours in this month of yours. You shall meet your Lord and He will question you about your deeds. When I am gone, do not revert to unbelief (or to error), with some of you striking [with their swords] the necks of others. Let everyone who is present give this message to those who are not. Some of those who get to learn of it may have a better understanding of it than some of those who have listened to it”. He then said: “Have I delivered [my message]?”’

Ibn Ḥabīb said in his narration: **‘and the Rajab of Muḍar’**.

And in Abu Bakr’s narration: **‘Do not go back to unbelief after I am gone’.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَيَحْيَى بْنُ حَبِيبٍ الْحَارِثِيُّ، (وَتَقَارَبَا فِي اللَّفْظِ) قَالا: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ، عَنْ أَيُّوبَ، عَنِ ابْنِ سِيرِينَ، عَنِ ابْنِ أَبِي بَكْرَةَ، عَنْ أَبِي بَكْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «إِنَّ الزَّمَانَ قَدِ اسْتَدَارَ كَهَيْئَتِهِ يَوْمَ خَلَقَ اللهُ السَّمَوَاتِ وَالأَرْضَ. السَّنَةُ اثْنَا عَشَرَ شَهْرًا، مِنْهَا أَرْبَعَةٌ حُرُمٌ: ثَلاَثَةٌ مُتَوَالِيَاتٌ ذُو الْقَعْدَةِ وَذُو الْحِجَّةِ وَالْمُحَرَّمُ، وَرَجَبٌ شَهْرُ مُضَرَ الَّذِي بَيْنَ جُمَادَى وَشَعْبَانَ. ثُمَّ قَالَ: «أَيُّ شَهْرٍ هَذَا»؟ قُلْنَا: اللهُ وَرَسُولُهُ أَعْلَمُ. قَالَ: فَسَكَتَ حَتَّى ظَنَنَّا أَنَّهُ سَيُسَمِّيهِ بِغَيْرِ اسْمِهِ. قَالَ: «أَلَيْسَ ذَا الْحِجَّةِ»؟. قُلْنَا بَلَى. قَالَ: «فَأَيُّ بَلَدٍ هَذَا»؟ قُلْنَا: اللهُ وَرَسُولُهُ أَعْلَمُ. قَالَ: فَسَكَتَ حَتَّى ظَنَنَّا أَنَّهُ سَيُسَمِّيهِ بِغَيْرِ اسْمِهِ. قَالَ: «أَلَيْسَ الْبَلْدَةَ». قُلْنَا بَلَى. قَالَ: «فَأَيُّ يَوْمٍ هَذَا»؟ قُلْنَا: اللهُ وَرَسُولُهُ أَعْلَمُ. قَالَ: فَسَكَتَ حَتَّى ظَنَنَّا أَنَّهُ سَيُسَمِّيهِ بِغَيْرِ اسْمِهِ. قَالَ: «أَلَيْسَ يَوْمَ النَّحْرِ»؟ قُلْنَا: بَلَى يَا رَسُولَ اللهِ. قَالَ: «فَإِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ» - قَالَ مُحَمَّدٌ وَأَحْسِبُهُ قَالَ

«وَأَعْرَاضَكُمْ» - حَرَامٌ عَلَيْكُمْ كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا. وَسَتَلْقَوْنَ رَبَّكُمْ فَيَسْأَلُكُمْ عَنْ أَعْمَالِكُمْ. فَلاَ تَرْجِعُنَّ بَعْدِي كُفَّارًا - أَوْ ضُلاَّلاً - يَضْرِبُ بَعْضُكُمْ رِقَابَ بَعْضٍ. أَلاَ لِيُبَلِّغِ الشَّاهِدُ الْغَائِبَ، فَلَعَلَّ بَعْضَ مَنْ يُبَلَّغُهُ يَكُونُ أَوْعَى لَهُ مِنْ بَعْضِ مَنْ سَمِعَهُ. ثُمَّ قَالَ: «أَلا هَلْ بَلَّغْتُ»؟

قَالَ ابْنُ حَبِيبٍ فِي رِوَايَتِهِ: «وَرَجَبُ مُضَرَ».

وَفِي رِوَايَةِ أَبِي بَكْرٍ: «فَلاَ تَرْجِعُوا بَعْدِي».

[3836–30]. (Dar al-Salam 4861) Naṣr ibn ʿAlī al-Jahḍamī narrated:[ii] Yazīd ibn Zurayʿ narrated; ʿAbdullāh ibn ʿAwn narrated; from Muhammad ibn Sīrīn; from ʿAbd al-Raḥmān ibn Abi Bakrah; from his father. He said: **‘On that day, [the Prophet] sat on his camel and one man held its rein. He said: “Do you know what day this is?” They said: “God and His Messenger know better. We thought that he would give it a different name”. He said: “Is it not the Day of Sacrifice?” We said: “Indeed, Messenger of God. He said: “Which month is this?” We said: “God and His Messenger know better”. He said: “Is it not Dhul-Ḥijjah?” We said: “Indeed, Messenger of God”. He said: “Which city is this?” We said: “God and His Messenger know better. We even thought that he would give it a different name.” He said: “Is it not the City?” We said: “Indeed, Messenger of God”. He said: “Your blood, your property and your honour are forbidden for you in the same way as the sanctity of this day of yours in this month of yours in this city of yours. Let those present deliver this message to those who are absent”.’**

He [i.e., the narrator] said: ‘He then went and took two fine rams and slaughtered them, and took a good portion of lamb and shared it between us’.

حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ، حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، حَدَّثَنَا عَبْدُ اللهِ بْنُ عَوْنٍ، عَنْ مُحَمَّدِ بْنِ سِيرِينَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ، عَنْ أَبِيهِ قَالَ: لَمَّا كَانَ ذَلِكَ الْيَوْمُ، قَعَدَ عَلَى بَعِيرِهِ، وَأَخَذَ إِنْسَانٌ بِخِطَامِهِ، فَقَالَ: «أَتَدْرُونَ أَيَّ يَوْمٍ هَذَا»؟ قَالُوا اللهُ وَرَسُولُهُ أَعْلَمُ. حَتَّى ظَنَنَّا أَنَّهُ سَيُسَمِّيهِ سِوَى اسْمِهِ. فَقَالَ: «أَلَيْسَ بِيَوْمِ النَّحْرِ»؟ قُلْنَا: بَلَى يَا رَسُولَ اللهِ. قَالَ: «فَأَيُّ شَهْرٍ هَذَا»؟ قُلْنَا: اللهُ وَرَسُولُهُ أَعْلَمُ. قَالَ: «أَلَيْسَ بِذِي الْحِجَّةِ»؟ قُلْنَا: بَلَى يَا رَسُولَ اللهِ. قَالَ: «فَأَيُّ بَلَدٍ هَذَا»؟ قُلْنَا: اللهُ وَرَسُولُهُ أَعْلَمُ. قَالَ: حَتَّى ظَنَنَّا أَنَّهُ سَيُسَمِّيهِ سِوَى اسْمِهِ. قَالَ: «أَلَيْسَ بِالْبَلْدَةِ»؟ قُلْنَا: بَلَى يَا رَسُولَ اللهِ. قَالَ: «فَإِنَّ دِمَاءَكُمْ، وَأَمْوَالَكُمْ، وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا. فَلْيُبَلِّغِ الشَّاهِدُ الْغَائِبَ».

قَالَ: ثُمَّ انْكَفَأَ إِلَى كَبْشَيْنِ أَمْلَحَيْنِ فَذَبَحَهُمَا، وَإِلَى جُزَيْعَةٍ مِنَ الْغَنَمِ فَقَسَمَهَا بَيْنَنَا.

[3837–000]. (Dar al-Salam 4162) Muhammad ibn al-Muthannā narrated: Ḥammād ibn Masʿadah narrated; from Ibn ʿAwn; he said: Muhammad said: ʿAbd al-Raḥmān ibn Abi Bakrah said; from his father. He said: **‘On that day, the Prophet sat on a camel. A man held its rein…’ He added a similar text to the hadith narrated by Yazīd ibn Zurayʿ.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، حَدَّثَنَا حَمَّادُ بْنُ مَسْعَدَةَ، عَنِ ابْنِ عَوْنٍ قَالَ: قَالَ مُحَمَّدٌ: قَالَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرَةَ: عَنْ أَبِيهِ قَالَ: لَمَّا كَانَ ذَلِكَ الْيَوْمُ، جَلَسَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَى بَعِيرٍ. قَالَ: وَرَجُلٌ آخِذٌ بِزِمَامِهِ، أَوْ قَالَ بِخِطَامِهِ. فَذَكَرَ نَحْوَ حَدِيثِ يَزِيدَ بْنِ زُرَيْعٍ.

[3838–31]. (Dar al-Salam 4163) Muhammad ibn Ḥātim ibn Maymūn narrated to me: Yaḥyā ibn Saʿīd narrated; Qurrah ibn Khālid narrated; Muhammad ibn Sīrīn narrated; from ʿAbd al-Raḥmān ibn Abi Bakrah, and from another man who is in my opinion better than ʿAbd al-Raḥmān ibn Abi Bakrah [H]. Also, Muhammad ibn ʿAmr ibn Jabalah and Ahmad ibn Khirāsh narrated; both said: Abu ʿĀmir, ʿAbd al-Malik ibn ʿAmr narrated; Qurrah narrated with the same chain of transmission as that stated by Yaḥyā ibn Saʿīd, calling the unnamed man Ḥumayd ibn ʿAbd al-Raḥmān, from Abu Bakrah. He said: **‘God’s Messenger (peace be upon him) addressed us on the Day of Sacrifice. He asked: “Which day is yours?” They narrated the hadith in the same text as the narration by Ibn ʿAwn’. However, he does not mention ‘and your honour’. Nor does he mention the last portion: ‘He went and took two…’. He said in the hadith: ‘Like the sanctity of this day of yours in this month of yours in this city of yours, until the day when you meet your Lord. Have I delivered my message?’ They said: ‘Yes’. He said: ‘My Lord, be my witness’.**

حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ، حَدَّثَنَا قُرَّةُ بْنُ خَالِدٍ، حَدَّثَنَا مُحَمَّدُ بْنُ سِيرِينَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ، وَعَنْ رَجُلٍ آخَرَ هُوَ فِي نَفْسِي أَفْضَلُ مِنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرَةَ ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ وَأَحْمَدُ بْنُ خِرَاشٍ قَالا: حَدَّثَنَا أَبُو عَامِرٍ عَبْدُ الْـمَلِكِ بْنُ عَمْرٍو، حَدَّثَنَا قُرَّةُ بِإِسْنَادِ يَحْيَى بْنِ سَعِيدٍ - وَسَمَّى الرَّجُلَ حُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ - عَنْ أَبِي بَكْرَةَ قَالَ: خَطَبَنَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَوْمَ النَّحْرِ، فَقَالَ: «أَيُّ يَوْمٍ هَذَا»؟ وَسَاقُوا الْحَدِيثَ بِمِثْلِ حَدِيثِ ابْنِ عَوْنٍ، غَيْرَ أَنَّهُ لاَ يَذْكُرُ:

«وَأَعْرَاضَكُمْ». وَلاَ يَذْكُرُ: ثُمَّ انْكَفَأَ إِلَى كَبْشَيْنِ، وَمَا بَعْدَهُ. وَقَالَ فِي الْحَدِيثِ: «كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا، إِلَى يَوْمِ تَلْقَوْنَ رَبَّكُمْ. أَلا هَلْ بَلَّغْتُ»؟ قَالُوا نَعَمْ. قَالَ: «اللَّهُمَّ اشْهَدْ».

Text Explanation

Hadith No. 3835 mentions the four sacred months, and all Muslims agree that they are the ones, but they differ in how best to mention them due to how they occur in the year. A number of scholars from Kufah and literary people said that they should be mentioned starting with al-Muḥarram, which is the first month in the lunar year, then Rajab, which is the seventh month and finishing with Dhul-Qaʿdah and Dhul-Ḥijjah, the eleventh and twelfth months respectively. Scholars of Madīnah, Basrah and the majority of scholars elsewhere said that they are mentioned as they occur in several hadiths, including this one: Dhul-Qaʿdah, Dhul-Ḥijjah, al-Muḥarram and Rajab: three consecutive months and a single one.

When mentioning Rajab, the Prophet defines it as follows: ‘Rajab which is Muḍar’s month the one between Jumādā and Shaʿbān’. He does this to make absolutely clear that there can be no confusion about it, because there were differences about it between the two major tribes of Muḍar and Rabīʿah. Muḍar defines it as the one universally known nowadays, which is the one between Jumādā and Shaʿbān, while Rabīʿah made it Ramadan. Therefore, the Prophet called it Muḍar’s month. It is also said that Muḍar used to attach more sanctity to this month than other tribes. It is also said that Arabian tribes might call Rajab and Shaʿbān: the two Rajabs; or they may call Jumādā and Rajab: the two Jumādās and call Shaʿbān: Rajab.

The Prophet starts this hadith, No. 3835 by saying: ‘Time has turned back to its [original] form when God created the heavens and the earth’. Scholars said that in pre-Islamic days, the Arabs used to adhere to the practice established by Abraham’s faith, making four months sacred, when

no fighting was permitted. Sometimes, they felt it too hard to refrain from fighting for three consecutive months. Therefore, if they needed to fight, they may postpone the month of al-Muḥarram to the one that follows it, which is Ṣafar, and then delay it in the following year to another month. They may do this year after year, which ultimately led to their utter confusion. The Prophet's pilgrimage coincided with their decision for that year as they held the month of Dhul-Ḥijjah sacred. Hence, the Prophet mentioned that the time movement meant that it had turned back to its original form which God had decreed when He created the universe.

Abu ʿUbayd said: 'They used to put months back, which is what God refers to as He says: 'The postponement is only an excess of unbelief'. (9: 37). If they needed to make a raid or fight in al-Muḥarram, they would postpone it to Ṣafar, then they would postpone Ṣafar in the following year. On that year of the Prophet's pilgrimage, it so occurred that al-Muḥarram was at its rightful time'. *Qadi* ʿIyāḍ mentioned other views in explaining the meaning of the hadith, but these are unclear, and some are invalid.

The Prophet asked his audience about the day, the month and the city they were in. This he intended to highlight their importance, and he added to such importance by remaining silent for a while each time. To each of these questions, their answer: 'God and His Messenger know better'. This is an aspect of the good manners of the Prophet's Companions. They realized that the Prophet was not seeking information which he did not know. Hence, he was not expecting the naming of the day, month or the city. He wanted to highlight something different, as he actually did, saying: 'Your blood, your property and your honour are forbidden for you in the same way as the sanctity of this day of yours in this month of yours in this city of yours'. Thus the Prophet lays great emphasis on the sanctity of people's lives, property and honour, warning against defiling such sanctity.

The Prophet also said in this hadith: 'When I am gone, do not revert to error, with some of you striking [with their swords] the necks of others'. We explained this as we commented on Hadiths No. 121 and No. 122 in the

Book of Faith, Volume 2. We explained that it cannot be cited in support of the view that commitment of sins makes a person an unbeliever. What is meant by ‘unbelief or error’ in this hadith is the denial of God’s favours and blessings, or that it refers to those who think it is lawful to wage war against Muslims without justification.

The Prophet then says: ‘Let everyone who is present give this message to those who are not’. This makes clear that transmitting knowledge is a duty. It is indeed a collective duty, so that it becomes widely known. He adds: ‘Some of those who get to learn of it may have a better understanding of it than some of those who have listened to it’. Scholars cite this as evidence in support of people of learning reporting from others who are not well versed in Islamic knowledge, if they are accurate in their reporting.

The Prophet made this address sitting on his camel while a man held its rein. The man did so in order to keep the camel quiet, so that it did not disturb the one riding it. It also shows that when addressing people, it is preferable for the speaker to be in a higher position than his audience, so that they can see and hear him well.

Transmission

Qadi ʿIyāḍ mentions that al-Dāraquṭnī said that the tail part of hadith No. 3836 is an error by Ibn ʿAwan. He refers to the part that says: ‘He then went and took two fine rams and slaughtered them, and took a good portion of lamb and shared it between us’. Al-Dāraquṭnī adds that Ibn Sīrīn narrated the hadith from Anas, but Ibn ʿAwn interpolated it here, narrating it from Ibn Sīrīn from ʿAbd al-Raḥmān ibn Abi Bakrah from his father from the Prophet’.

Qadi ʿIyāḍ adds: ‘Al-Bukhari relates this hadith from Ibn ʿAwn, but does not mention this addition. Perhaps he deliberately left it out. Ayyūb and Qurrah narrate this hadith from Ibn Sīrīn in this chapter without this part. Most probably this addition comes at the end of a different hadith stating the Prophet’s address on the Day of the Eid of Sacrifice. The

narrator might have mistaken it, adding it to the address at the pilgrimage. Or perhaps these are two different hadiths and the one is added to the other. Muslim includes in the Book of Sacrifice a hadith narrated by Ayyūb and Hishām from Ibn Sīrīn from Anas, stating that ‘the Prophet offered the prayer, then delivered a speech in which he ordered anyone who had slaughtered their sacrifice to redo it’. He adds at the end of the hadith: ‘He then went and took two fine rams and slaughtered them. The people then went up and shared out the offering’. This is the correct report which clears the matter.

i. Related by al-Bukhari, 1741, 4406, 5550. 7.078, 7447 and in shorter versions, 67, 105 and 3197.

ii. The main part of the hadith is related by al-Bukhari as the previous one, but the last part about the two rams is related by al-Tirmidhī 1520, al-Nasā’ī, 4401.

CHAPTER 10

THE ADMISSION OF KILLING AND ITS CONSEQUENCES

[3839–32]. (Dar al-Salam 4164) ʿUbaydullāh ibn Muʿādh al-ʿAnbarī narrated:[i] my father narrated; Abu Yūnus narrated; from Simāk ibn Ḥarb; that ʿAlqamah ibn Wā'il narrated to him that his father narrated to him: **'I was sitting with the Prophet when a man leading another with a strip of leather came over and said: "Messenger of God, this man killed my brother". God's Messenger said: "Did you kill him?" (He said: If he does not confess, I shall provide clear evidence) He said: "Yes, I killed him". [The Prophet] said: "How did you kill him?" He said: "Both of us were striking down the leaves of a tree when he insulted me. I was angry and I hit him with an axe on his temple causing his death". The Prophet said to the killer: "Do you have what you can pay for yourself as blood money?" The man said: "I have nothing other than my clothes and my axe". The Prophet said: "Will your people buy your release?" He said: "I am too insignificant for them to do it". The Prophet handed the strip to the man [i.e., to the deceased's brother] and said: "Take your man". He took him and left. When he had gone some distance, the Prophet said: "If he kills him, he is like him". The man came back and said: "Messenger of God, I have**

been informed that you said: If he kills him, he is like him. I only took him with your consent". God's Messenger said to him: "Would you not wish that he bears your and your brother's sin?" The man said: "Messenger of God! (and perhaps he said) Yes". The Prophet said: "Then this is how it is". He dropped the strip and let him go free.'

حَدَّثَنَا عُبَيْدُ اللهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ، حَدَّثَنَا أَبِي، حَدَّثَنَا أَبُو يُونُسَ، عَنْ سِمَاكِ بْنِ حَرْبٍ، أَنَّ عَلْقَمَةَ بْنَ وَائِلٍ حَدَّثَهُ، أَنَّ أَبَاهُ حَدَّثَهُ قَالَ: إِنِّي لَقَاعِدٌ مَعَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، إِذْ جَاءَ رَجُلٌ يَقُودُ آخَرَ بِنِسْعَةٍ، فَقَالَ: يَا رَسُولَ اللهِ، هَذَا قَتَلَ أَخِي. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَقَتَلْتَهُ»؟ فَقَالَ: إِنَّهُ لَوْ لَمْ يَعْتَرِفْ أَقَمْتُ عَلَيْهِ الْبَيِّنَةَ. قَالَ: نَعَمْ قَتَلْتُهُ. قَالَ: «كَيْفَ قَتَلْتَهُ»؟ قَالَ: كُنْتُ أَنَا وَهُوَ نَخْتَبِطُ مِنْ شَجَرَةٍ، فَسَبَّنِي فَأَغْضَبَنِي، فَضَرَبْتُهُ بِالْفَأْسِ عَلَى قَرْنِهِ، فَقَتَلْتُهُ. فَقَالَ لَهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «هَلْ لَكَ مِنْ شَيْءٍ تُؤَدِّيهِ عَنْ نَفْسِكَ»؟ قَالَ: مَا لِي مَالٌ إِلاَّ كِسَائِي وَفَأْسِي. قَالَ: «فَتَرَى قَوْمَكَ يَشْتَرُونَكَ». قَالَ: أَنَا أَهْوَنُ عَلَى قَوْمِي مِنْ ذَاكَ. فَرَمَى إِلَيْهِ بِنِسْعَتِهِ. وَقَالَ: «دُونَكَ صَاحِبَكَ». فَانْطَلَقَ بِهِ الرَّجُلُ. فَلَمَّا وَلَّى قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنْ قَتَلَهُ فَهُوَ مِثْلُهُ». فَرَجَعَ فَقَالَ: يَا رَسُولَ اللهِ، إِنَّهُ بَلَغَنِي أَنَّكَ قُلْتَ: «إِنْ قَتَلَهُ فَهُوَ مِثْلُهُ»، وَأَخَذْتُهُ بِأَمْرِكَ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَمَا تُرِيدُ أَنْ يَبُوءَ بِإِثْمِكَ وَإِثْمِ صَاحِبِكَ». قَالَ: يَا نَبِيَّ اللهِ (لَعَلَّهُ قَالَ) بَلَى. قَالَ: «فَإِنَّ ذَاكَ كَذَاكَ». قَالَ: فَرَمَى بِنِسْعَتِهِ وَخَلَّى سَبِيلَهُ.

[3840–33]. (Dar al-Salam 4165) Muhammad ibn Ḥātim narrated to me: Saʿīd ibn Sulaymān narrated; Hushaym narrated; Ismāʿīl ibn Sālim reported; from ʿAlqamah ibn Wā'il; from his father. He said: '**God's Messenger was brought a man who had killed another man. He let the victim's next of kin have the killer. He took him**

away dragging him with a strip of leather around his neck. When he left, God's Messenger said: "The killer and the killed will be in hell". A man went to that man and told him what God's Messenger said. He let the killer free'.

Ismāʿīl ibn Sālim said: **'I mentioned this to Ḥabīb ibn Abi Thābit and he said: Ibn Ashwaʿ narrated to me that "The Prophet had asked him to pardon the man but he refused".'**

وَحَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا سَعِيدُ بْنُ سُلَيْمَانَ، حَدَّثَنَا هُشَيْمٌ، أَخْبَرَنَا إِسْمَاعِيلُ بْنُ سَالِمٍ، عَنْ عَلْقَمَةَ بْنِ وَائِلٍ، عَنْ أَبِيهِ قَالَ: أُتِيَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِرَجُلٍ قَتَلَ رَجُلاً، فَأَقَادَ وَلِيَّ الْمَقْتُولِ مِنْهُ، فَانْطَلَقَ بِهِ وَفِي عُنُقِهِ نِسْعَةٌ يَجُرُّهَا. فَلَمَّا أَدْبَرَ قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ». فَأَتَى رَجُلٌ الرَّجُلَ فَقَالَ لَهُ مَقَالَةَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَخَلَّى عَنْهُ.

قَالَ إِسْمَاعِيلُ بْنُ سَالِمٍ فَذَكَرْتُ ذَلِكَ لِحَبِيبِ بْنِ أَبِي ثَابِتٍ فَقَالَ: حَدَّثَنِي ابْنُ أَشْوَعَ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِنَّمَا سَأَلَهُ أَنْ يَعْفُوَ عَنْهُ فَأَبَى.

Text Explanation

This hadith mentions the case of the two men who were striking a tree so that its leaves fall down and they would gather the leaves to feed their animals. They quarrelled and one of them killed the other. The hadith includes several points. The first is to be tough with criminals and bring them to the judge, even if they have to be tied. Also, an accused person should be asked about the charge, because his admission, if given, will be sufficient. The plaintiff and the judge will not then need to bring and question any witnesses. To rule in a case on the basis of admission is a verdict based on certainty, while other evidence simply makes up a case.

The hadith further indicates that a ruler or a judge may request the victim's relatives to pardon the offender. Such pardon may be given after the case is put for judgement. It also shows that a case of murder may be settled with the payment of blood money, because the Prophet asked the killer whether he had something to give to the victim's relatives as blood money. Moreover the hadith confirms that admission of deliberate killing is acceptable.

When the victim's brother left, leading the killer away, the Prophet said: 'If he kills him, he is like him', and in the second version, the Prophet said: 'The killer and the killed will be in hell'. These two statements by the Prophet need explanation.

The first statement, 'If he kills him, he is like him', means that the two are of the same status, with neither having a credit higher than the other. The victim's relative would have taken his full right by killing the killer of his brother. If he pardoned him, he would have done him a great favour and would have earned a rich reward from God in the Hereafter, in addition to the praise he would have abundantly given him in this life. Some scholars explain the Prophet's statement as meaning that if the man killed his brother's killer, he would be a killer like him, although the two killings are different with one forbidden and the other permissible. They are also equal in being motivated by anger and following desire. This is even more so because the Prophet tried to persuade the man to pardon the offender. The Prophet said his statement in this ambiguous way, speaking the truth, to give an intended and true impression. This is so in the hope that the victim's brother might become apprehensive and might pardon the killer. The pardon would benefit both the victim and his brother, which is expressed in the Prophet's subsequent words to the victim's brother: 'Would you not wish that he bears your and your brother's sin?' At the same time, the pardon would benefit the offender as it would save his life. Since the pardon would be of benefit to all concerned, the Prophet achieved this through making an ambiguous statement.

Al-Ḍamrī and others scholars of the Shāfiʿī School as well as other schools said that when a scholar is asked for a ruling, he may give an ambiguous answer if he realizes that it serves a good purpose and remains true. They give the following example: a man asks whether a killer may repent and have his repentance accepted. The scholar fears that if he gives an affirmative answer, it will encourage killing because an aggressor may feel that killing someone is a pardonable offence and that he could always repent later. In this case, the scholar answers his questioner in the following way: 'It is authentically reported that Ibn ʿAbbās said: 'No repentance is accepted from a murderer'. The scholar's answer is correct in as far as it goes, which is stating what Ibn ʿAbbās said. The scholar does not say that he and other scholars do not agree with Ibn ʿAbbās's view on this point. Thus the questioner may form the impression that the scholar is of the same opinion and this would deter him from killing.

A similar case is that of a question put to a scholar: 'Does backbiting invalidate fasting?' He answers: 'A hadith states that backbiting invalidates fasting'. He does not mention any details to qualify the hadith. But God knows best.

In the second hadith in this chapter, the Prophet said: 'The killer and the killed will be in hell'. The Prophet did not say this in reference to these two people in particular. How could the statement refer to them when the killer was taken by the Prophet's order? The Prophet was simply referring to another situation in which two Muslims fight each other unlawfully. In this case, both will be in hell because each of them intended to kill the other. The Prophet merely stated this in order to give an ambiguous impression, because of what we said earlier. The victim's brother took that ambiguous impression and pardoned the killer. The intended result was achieved, but God knows best.

The Prophet said to the victim's brother: 'Would you not wish that he bears your and your brother's sin?' Some scholars said that this means that he bears the burden of the one whom he killed because of his killing him,

and the burden of his brother because he caused the loss of his brother. This would have been revealed to the Prophet in the case of this particular person. On the other hand, it is likely that the Prophet meant that if the brother would pardon the killer, his own and his killed brother's sins would be wiped away. This would refer to their sins prior to the incident that led to the killing, and which were not related to the killer. Thus the Prophet's words that the killer would 'bear their burdens' are used figuratively and they actually mean that their past sins would be wiped away, not transferred to the killer.

Qadi ʿIyāḍ said that this hadith shows that when the death penalty is inflicted on a killer as retaliation, it does not absolve the killer totally. It only atones for his offence against God as he killed a life He created. The right of the killed person remains outstanding, but God knows best.

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i. Related by Abu Dāwūd, 4499, 4500 and 4501; al-Nasā'ī, 4737–4,743 and 5430.

CHAPTER 11

WHO PAYS BLOOD MONEY?

[3841–34]. (Dar al-Salam 4166) Yaḥyā ibn Yaḥyā narrated:[i] he said: I read out to Mālik; from Ibn Shihāb; from Abu Salamah; from Abu Hurayrah; that **‘Two women from Hudhayl [quarrelled] and one of them hurled something at the other, causing her miscarriage. The Prophet ruled a compensation: a male or female slave’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ امْرَأَتَيْنِ مِنْ هُذَيْلٍ، رَمَتْ إِحْدَاهُمَا الأُخْرَى فَطَرَحَتْ جَنِينَهَا. فَقَضَى فِيهِ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِغُرَّةٍ: عَبْدٍ أَوْ أَمَةٍ.

[3842–35]. (Dar al-Salam 4167) Qutaybah ibn Saʿīd narrated:[ii] Layth narrated; from Ibn Shihāb; from Ibn al-Musayyib; from Abu Hurayrah; that he said: **‘God’s Messenger (peace be upon him) ruled in the case of a foetus belonging to a woman from Laḥyān which was aborted dead, ordering compensation: a male or female slave. Then the woman against whom the compensation was ordered died. God’s Messenger ruled that her children and husband inherit her, and that the compensation for the miscarriage was payable by her close relatives [i.e., *ʿaṣabah*]’.**

وَحَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ شِهَابٍ، عَنِ ابْنِ الْـمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: قَضَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ، سَقَطَ مَيِّتًا، بِغُرَّةٍ: عَبْدٍ أَوْ أَمَةٍ. ثُمَّ إِنَّ الْـمَرْأَةَ الَّتِي قُضِيَ عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ. فَقَضَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا، وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا.

[3843–36]. (Dar al-Salam 4168) Abu al-Ṭāhir narrated to me:[iii] Ibn Wahb narrated [H]. Also, Ḥarmalah ibn Yaḥyā al-Tujībī narrated; Ibn Wahb reported; Yūnus reported to me; from Ibn Shihāb; from Ibn al-Musayyib and Abu Salamah ibn ʿAbd al-Raḥmān; that Abu Hurayrah said: **‘Two women from Hudhayl fought each other and one of them hurled a stone at the other and killed her with the foetus inside her. They put their dispute to God’s Messenger (peace be upon him), and he ruled that the compensation for the embryo was a male or female slave. He also ruled that the blood money for the killed woman was payable by the killer’s close relatives. She was to be inherited by her children and her other heirs. Ḥamal ibn al-Nābighah al-Hudhalī said: “Messenger of God, why would I have to pay for one who neither drank nor ate; nor spoke nor cried? Such a one is a non-entity”. The Prophet said: “This one is a brother of soothsayers”, because he spoke in rhyme.’**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، حَدَّثَنَا ابْنُ وَهْبٍ، ح. وَحَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى التُّجِيبِيُّ، أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنِ ابْنِ الْـمُسَيَّبِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، أَنَّ أَبَا هُرَيْرَةَ قَالَ: اقْتَتَلَتِ امْرَأَتَانِ مِنْ هُذَيْلٍ، فَرَمَتْ إِحْدَاهُمَا الأُخْرَى بِحَجَرٍ، فَقَتَلَتْهَا وَمَا فِي بَطْنِهَا. فَاخْتَصَمُوا إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَضَى رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ

وَسَلَّمَ أَنَّ دِيَةَ جَنِينِهَا غُرَّةٌ: عَبْدٌ أَوْ وَلِيدَةٌ. وَقَضَى بِدِيَةِ الْمَرْأَةِ عَلَى عَاقِلَتِهَا، وَوَرَّثَهَا وَلَدَهَا وَمَنْ مَعَهُمْ. فَقَالَ حَمَلُ بْنُ النَّابِغَةِ الْهُذَلِيُّ: يَا رَسُولَ اللهِ، كَيْفَ أَغْرَمُ مَنْ لا شَرِبَ وَلا أَكَلَ، وَلا نَطَقَ وَلا اسْتَهَلَّ؟ فَمِثْلُ ذَلِكَ يُطَلُّ؟ فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّمَا هَذَا مِنْ إِخْوَانِ الْكُهَّانِ». مِنْ أَجْلِ سَجْعِهِ الَّذِي سَجَعَ.

[3844–000]. (Dar al-Salam 4169) ʿAbd ibn Ḥumayd narrated: ʿAbd al-Razzāq reported; Maʿmar reported; from al-Zuhrī; from Abu Salamah; from Abu Hurayrah. He said: **‘Two women fought…’ he narrated the full hadith but did not mention: ‘She was to be inherited by her children and her other heirs’. He also said: ‘Someone said: “Why should we pay?”’ but did not mention Ḥamal ibn Mālik by name.**

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: اقْتَتَلَتِ امْرَأَتَانِ... وَسَاقَ الْحَدِيثَ بِقِصَّتِهِ. وَلَمْ يَذْكُرْ وَوَرَّثَهَا وَلَدَهَا وَمَنْ مَعَهُمْ. وَقَالَ: فَقَالَ قَائِلٌ: كَيْفَ نَعْقِلُ؟ وَلَمْ يُسَمِّ حَمَلَ بْنَ مَالِكٍ.

[3845–37]. (Dar al-Salam 4170) Isḥāq ibn Ibrāhīm al-Ḥanẓalī narrated:[iv] Jarīr reported; from Manṣūr; from Ibrāhīm; from ʿUbayd ibn Nuḍaylah al-Khuzāʿī; from al-Mughīrah ibn Shuʿbah. He said: **‘A woman hit her husband’s other wife with the pillar of a tent when she was pregnant, causing her death. One of them was from Laḥyān. The Prophet ruled that the blood money for the killed woman and her foetus were payable by the close relatives, or *ʿaṣabah*, of the killer. One man of the killer’s relatives said: “Do we have to pay for one who neither ate nor drank nor cried? Such a one is a non-entity”. The Prophet said:**

“A rhyme like that of Bedouins? He imposed the blood money on them”.’

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ الْحَنْظَلِيُّ، أَخْبَرَنَا جَرِيرٌ، عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عُبَيْدِ بْنِ نُضَيْلَةَ الْخُزَاعِيِّ، عَنِ الْـمُغِيرَةِ بْنِ شُعْبَةَ قَالَ: ضَرَبَتِ امْرَأَةٌ ضَرَّتَهَا بِعَمُودِ فُسْطَاطٍ، وَهِيَ حُبْلَى، فَقَتَلَتْهَا. قَالَ: وَإِحْدَاهُمَا لِحْيَانِيَّةٌ. قَالَ: فَجَعَلَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ دِيَةَ الْـمَقْتُولَةِ عَلَى عَصَبَةِ الْقَاتِلَةِ، وَغُرَّةً لِمَا فِي بَطْنِهَا. فَقَالَ رَجُلٌ مِنْ عَصَبَةِ الْقَاتِلَةِ: أَنَغْرَمُ دِيَةَ مَنْ لا أَكَلَ وَلا شَرِبَ وَلا اسْتَهَلَّ؟ فَمِثْلُ ذَلِكَ يُطَلُّ؟ فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَسَجْعٌ كَسَجْعِ الأَعْرَابِ»؟ قَالَ: وَجَعَلَ عَلَيْهِمُ الدِّيَةَ.

[3846–38]. (Dar al-Salam 4171–4172) Muhammad ibn Rāfiʿ narrated to me: Yaḥyā ibn Adam narrated; Mufaḍḍal narrated; from Manṣūr; from Ibrāhīm; from ʿUbayd ibn Nuḍaylah; from al-Mughīrah ibn Shuʿbah; that **‘A woman killed her husband’s other wife by a pillar of a tent. The case was put to God’s Messenger (peace be upon him) and he ruled that her close relatives pay the victim’s blood money. She was pregnant, and he ruled compensation for the foetus. Some of her close relatives said: “Are we to pay compensation for one who neither ate nor drank, nor wept and cried? Such a one is a non-entity”. The Prophet said: “A rhyme like that of bedouins?”.’**

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا يَحْيَى بْنُ آدَمَ، حَدَّثَنَا مُفَضَّلٌ، عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عُبَيْدِ بْنِ نُضَيْلَةَ، عَنِ الْـمُغِيرَةِ بْنِ شُعْبَةَ، أَنَّ امْرَأَةً، قَتَلَتْ ضَرَّتَهَا بِعَمُودِ فُسْطَاطٍ. فَأُتِيَ فِيهِ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَضَى عَلَى عَاقِلَتِهَا بِالدِّيَةِ. وَكَانَتْ حَامِلاً، فَقَضَى فِي

الْجَنِينِ بِغُرَّةٍ. فَقَالَ بَعْضُ عَصَبَتِهَا: أَنَدِي مَنْ لا طَعِمَ وَلا شَرِبَ وَلا صَاحَ فَاسْتَهَلَّ؟ وَمِثْلُ ذَلِكَ يُطَلُّ؟ قَالَ: فَقَالَ: «سَجْعٌ كَسَجْعِ الأَعْرَابِ».

Muhammad ibn Ḥātim and Muhammad ibn Bashshār narrated to me: both said: ʿAbd al-Raḥmān ibn Mahdī narrated; from Sufyān; from Manṣūr; with the same chain of transmission: **a text with the same meaning as the narration by Jarīr and Mufaḍḍal.**

حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ وَمُحَمَّدُ بْنُ بَشَّارٍ، قَالا: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، عَنْ سُفْيَانَ، عَنْ مَنْصُورٍ، بِهَذَا الإِسْنَادِ: مِثْلَ مَعْنَى حَدِيثِ جَرِيرٍ وَمُفَضَّلٍ.

[3847–000]. (Dar al-Salam 4173) Abu Bakr ibn Abi Shaybah, Muhammad ibn al-Muthannā and Ibn Bashshār narrated: they said: Muhammad ibn Jaʿfar narrated; from Shuʿbah; from Manṣūr, with their chain of transmission: **the same text, except that it says: ‘She miscarried. The case was put to the Prophet (peace be upon him) and he ruled that compensation was due, making it payable by the woman’s guardians’. He did not mention blood money for the killed woman.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ قَالُوا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، عَنْ شُعْبَةَ، عَنْ مَنْصُورٍ، بِإِسْنَادِهِمُ الْحَدِيثَ بِقِصَّتِهِ. غَيْرَ أَنَّ فِيهِ: فَأَسْقَطَتْ فَرُفِعَ ذَلِكَ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَضَى فِيهِ بِغُرَّةٍ. وَجَعَلَهُ عَلَى أَوْلِيَاءِ الْمَرْأَةِ. وَلَمْ يَذْكُرْ فِي الْحَدِيثِ دِيَةَ الْمَرْأَةِ.

[3848–39]. (Dar al-Salam 4174) Abu Bakr ibn Abi Shaybah, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated (Abu Bakr’s text):[v] Wakīʿ

(Isḥāq said: ‘reported’ and the other two said: ‘narrated’); from Hishām ibn ʿUrwah; from his father; from al-Miswar ibn Makhramah. He said: **‘ʿUmar ibn al-Khaṭṭāb consulted the people regarding causing a woman’s miscarriage. Al-Mughīrah ibn Shuʿbah said: “I attended the Prophet (peace be upon him) when he ruled its compensation: a male or female slave”. ʿUmar said: “Bring me someone to confirm what you said. Muhammad ibn Maslamah testified the same”.’**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ (وَاللَّفْظُ لأَبِي بَكْرٍ). (قَالَ إِسْحَاقُ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) وَكِيعٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ قَالَ: اسْتَشَارَ عُمَرُ بْنُ الْخَطَّابِ النَّاسَ فِي إِمْلاَصِ الْمَرْأَةِ، فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ شَهِدْتُ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَضَى فِيهِ بِغُرَّةٍ: عَبْدٍ أَوْ أَمَةٍ. قَالَ: فَقَالَ عُمَرُ: ائْتِنِي بِمَنْ يَشْهَدُ مَعَكَ. قَالَ: فَشَهِدَ لَهُ مُحَمَّدُ بْنُ مَسْلَمَةَ.

Text Explanation

These hadiths mention compensation for causing the death and miscarriage of a foetus. The Prophet uses the word *ghurrah*, defining it as ‘a male or female slave’. Linguistically, the word *ghurrah* means ‘whiteness in the face’. Hence, Abu ʿAmr said that such a slave ‘must be white. A black one is not enough. The Prophet only used this word because he wanted to add something more to the person of a slave. Otherwise, he would not have mentioned it’. However, Fiqh scholars hold a different view. They do not specify a white slave, but stress that the compensation should be equal to one tenth of the blood money for an adult.

Linguists say that the *ghurrah* means ‘the most precious part’, and in this hadith it refers to man because God has created man in the finest form.

In some narrations in anthologies other than the *Ṣaḥīḥ* it occurs as: ‘a compensation of a male or female slave or a mare or a mule’, but this is an invalid and unauthentic report. Yet some early scholars uphold it, as it is reported that Ṭāwūs, ʿAṭā’ and Mujāhid said that the compensation is a male or female slave or a mare. Dāwūd said that whatever is referred to by the word *ghurrah* is sufficient.

Scholars agree that the *ghurrah* is the blood money for a foetus, and that it is the same amount whether it is male or female. Scholars say that the reason is that the sex of the foetus may be unknown, which may lead to dispute. Therefore, Islamic law gives a ruling that prevents such dispute. The same is the case whether the foetus has developed its organs fully or not, or is still a morsel that has begun to take human shape. Whatever its form is like, the compensation is the same. The compensation is payable to its heirs, divided among them according to their inheritance shares. Thus, it is inherited but does not inherit from anyone. There is no similar case except that of a person who is partially free and partially a slave. According to our Shāfiʿī School, he remains a slave who does not inherit. Yet is that strictly so? Perhaps the more relevant question would be: Can he be an heir? Two answers are given, and the more correct one is that he inherits. This is our view and the great majority of scholars agree. *Qadi* ʿIyāḍ mentions that some scholars said that the miscarried foetus is treated as one of the mother’s own organs, which means that the compensation is given to her in full.

All the preceding relates to a foetus that is stillborn. If it is born alive then dies, the same blood money as that paid for an adult is payable. If it is male, the blood money is one hundred camels while fifty camels are payable as blood money if it is a female. This is agreed upon, whether it is killed deliberately or accidentally. When compensation, or *ghurrah*, is due, it is payable by the close relatives of the offender, not by the offender himself, according to al-Shāfiʿī, Abu Ḥanīfah and all Kufi scholars. Mālik and the scholars of Basrah said that it is payable by the offender. Al-Shāfiʿī

and others said that an indemnity is payable by the offender, while some said that no indemnity is incurred by the offender. This is the view of Mālik and Abu Ḥanīfah, but God knows best.

Hadith No. 3842 says: ‘God’s Messenger (peace be upon him) ruled in the case of a foetus belonging to a woman from Laḥyān which was aborted dead, ordering compensation: a male or female slave. Then the woman for whom the compensation was ordered died. God’s Messenger ruled that her children and husband inherit her, and that the compensation for the miscarriage was payable by her close relatives [i.e., *ʿaṣabah*]’. Scholars said that the wording of the hadith may be wrongly understood. The correct meaning is that the woman who died is the one who was hit, i.e., the foetus’s mother, not the offender who hit her. This is clearly stated in the next hadith: ‘She killed her and the foetus inside her’. Thus, the expression in the hadith, ‘the woman for whom the compensation was ordered,’ actually means ‘to whom’. The phrase ‘by her close relatives’ refers to the relatives of the killer woman.

Hadith No. 3843 says: ‘Two women from Hudhayl fought each other and one of them hurled a stone at the other and killed her with the foetus inside her…. God’s Messenger (peace be upon him) ruled that the blood money for the killed woman is payable by the killer’s close relatives’. In Hadith 3845, she hit her ‘with a pillar of a tent’. This is understood to be a small stone and a small pillar which is rarely used with the intention of killing. Thus the case is one of semi-deliberate killing in which the blood money is payable by the offender’s close relatives, while neither retaliatory punishment nor blood money is payable by the offender. This is the view of al-Shāfiʿī and the large majority of scholars.

In hadith No. 3843: ‘Ḥamal ibn al-Nābighah al-Hudhalī said: “Messenger of God, why would I have to pay from one who neither drank nor ate; nor spoke nor cried? Such a one is not considered”. The Prophet said: “This one is a brother of soothsayers”, because he spoke in rhyme’.

Ḥamal is in fact Ibn Mālik ibn al-Nābighah, but he is affiliated to his grandfather which was normal by the Arabs at the time.

In this hadith the Prophet comments on what Ḥamal said, saying: 'This one is a brother of soothsayers'. He said this because he spoke in rhyme. In the other version, the Prophet described it as bedouin rhyme. This is a criticism of the rhyme used by the speaker. Scholars said that the criticism applied for two reasons: the first is that it is contrary to Islamic law and tries to invalidate it, and the other is that it is affected. Using rhyming phrases is disapproved of on both counts. Yet the Prophet himself used rhyming phrases sometimes, but it came naturally, totally unaffected, and it certainly did not seek to counter Islamic law.

Hadith No. 3845 mentions that 'The Prophet ruled that the blood money for the killed woman and her foetus were payable by the close relatives, or *ʿaṣabah*, of the killer'. This serves as the basis for the view of scholars that blood money for accidental killing is payable by the close relatives of the offender, except his or her parents and children.

Transmission

Hadith No. 3848 begins as follows: 'Wakīʿ narrated from Hishām ibn ʿUrwah from his father from al-Miswar ibn Makhramah; he said: ʿUmar ibn al-Khaṭṭāb consulted the people regarding causing a woman's miscarriage…'. This hadith is questioned by al-Dāraquṭnī. He says: 'Wakīʿ erred in this hadith and Hishām's reporters disagreed with him. They do not mention al-Miswar, which is the correct way. Al-Bukhari relates the hadith as narrated in the other version which is the correct one'.

Al-Bukhari relates the hadith 'from Hishām from his father from al-Mughīrah that "ʿUmar asked about a woman's caused miscarriage'.

The chain of transmission must include both ʿUrwah, Hishām's father, and al-Miswar so that it will be complete because ʿUrwah was not a contemporary of ʿUmar. It must have been reported to him by al-Miswar.

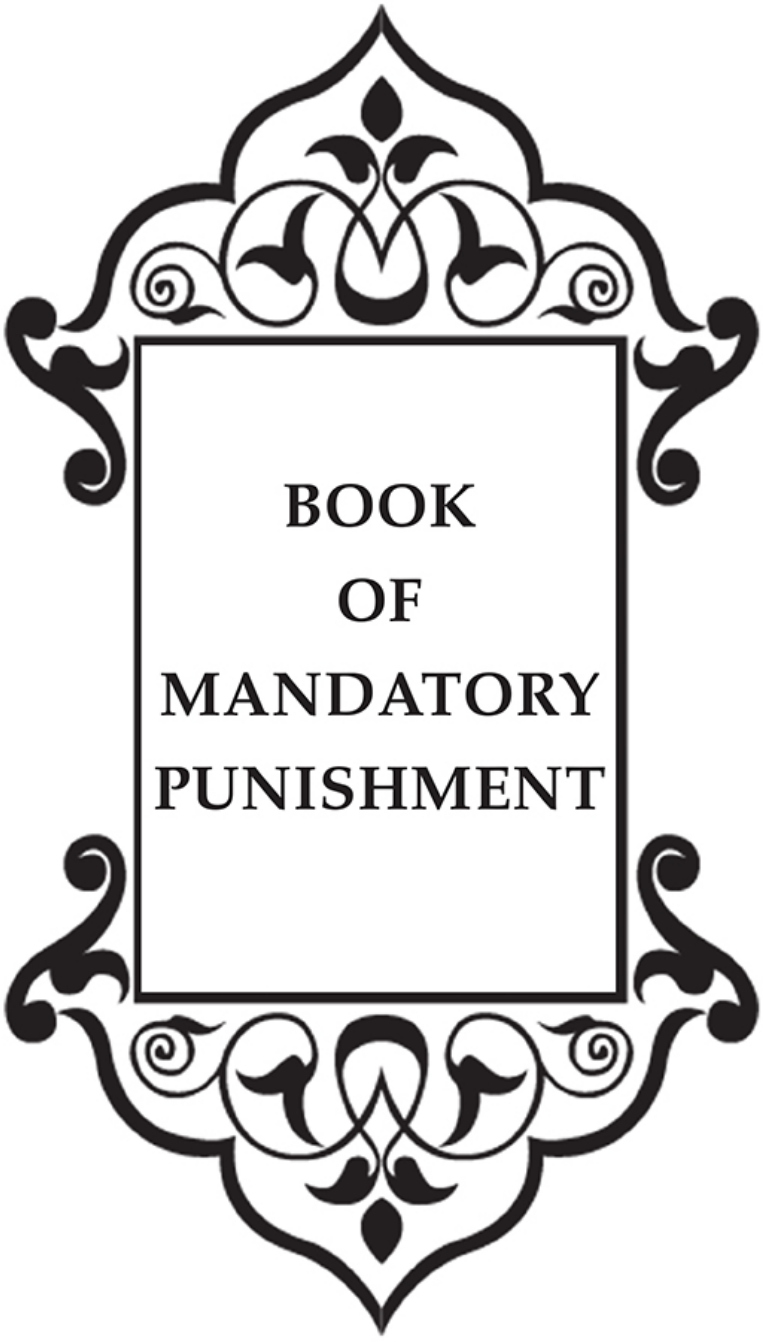
i. Related by al-Bukhari, 5759 and 6904; al-Nasā'ī, 4833.

ii. Related by al-Bukhari, 6740 and 6909; Abu Dāwūd, 4577; al-Tirmidhī, 2111; al-Nasā'ī, 4832.

iii. Related by al-Bukhari in a shorter version, 6910; Abu Dāwūd, 4576; al-Nasā'ī, 4833.

iv. Related by Abu Dāwūd, 4568 and 4569; al-Tirmidhī in a shorter version, 1411; al-Nasā'ī, 4836–4,842; Ibn Mājah, 2632.

v. Related by Abu Dāwūd, 4570; Ibn Mājah, 2640.


BOOK
OF
MANDATORY
PUNISHMENT

CHAPTER 1

THE PUNISHMENT FOR THEFT AND ITS AMOUNT

[3849–1]. (Dar al-Salam 4175–4176) Yaḥyā ibn Yaḥyā, Isḥāq ibn Ibrāhīm and Ibn Abi ʿUmar narrated (Yaḥyā's text):[i] Sufyān ibn ʿUyaynah (Ibn Abi ʿUmar said: 'narrated' and the other two said: 'reproted'); from al-Zuhrī; from ʿAmrah; from ʿĀ'ishah. She said: **'God's Messenger (peace be upon him) would cut the thief's hand for [stealing] one-quarter of a dīnār or more'.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَابْنُ أَبِي عُمَرَ (وَاللَّفْظُ لِيَحْيَى). (قَالَ ابْنُ أَبِي عُمَرَ حَدَّثَنَا وَقَالَ الآخَرَانِ أَخْبَرَنَا) سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ قَالَتْ: كَانَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقْطَعُ السَّارِقَ فِي رُبْعِ دِينَارٍ، فَصَاعِدًا.

Isḥāq ibn Ibrāhīm and ʿAbd ibn Ḥumayd narrated: both said: ʿAbd al-Razzāq reported; Maʿmar reported [H]. Also, Abu Bakr ibn Abi Shaybah narrated; Yazīd ibn Hārūn narrated; Sulaymān ibn Kathīr and Ibrāhīm ibn Saʿd reported; all from al-Zuhrī: **the same text with the same chain of transmission.**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَبْدُ بْنُ حُمَيْدٍ، قَالا: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، أَخْبَرَنَا سُلَيْمَانُ بْنُ كَثِيرٍ، وَإِبْرَاهِيمُ بْنُ سَعْدٍ: كُلُّهُمْ عَنِ الزُّهْرِي: بِمِثْلِهِ فِي هَذَا الإِسْنَادِ.

[3850–2]. (Dar al-Salam 4177) Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me and al-Walīd ibn Shujāʿ narrated (al-Walīd's and Ḥarmalah's text):[ii] they said: Ibn Wahb narrated; Yūnus reported to me; from Ibn Shihāb; from ʿUrwah and ʿAmrah; from ʿĀ'ishah; from God's Messenger (peace be upon him). He said: **'A thief's hand may not be cut unless he steals one-quarter of a dīnār or more.'**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى، وَحَدَّثَنَا الْوَلِيدُ بْنُ شُجَاعٍ (وَاللَّفْظُ لِلْوَلِيدِ وَحَرْمَلَةَ) قَالُوا: حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ وَعَمْرَةَ، عَنْ عَائِشَةَ، عَنْ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لا تُقْطَعُ يَدُ السَّارِقِ إِلاَّ فِي رُبْعِ دِينَارٍ فَصَاعِدًا».

[3851–3]. (Dar al-Salam 4178) Abu al-Ṭāhir, Hārūn ibn Saʿīd al-Aylī and Ahmad ibn ʿĪsā narrated to me (Hārūn's and Ahmad's text):[iii] Ibn Wahb (Abu al-Ṭāhir said: 'reported' and the other two said: 'narrated'); Makhramah reported to me; from his father; from Sulaymān ibn Yasār; from ʿAmrah; that she heard ʿĀ'ishah narrating that she heard God's Messenger (peace be upon him) say: **'A [thief's] hand may not be cut except for a theft of one-quarter of a dīnār or more.'**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَهَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، وَأَحْمَدُ بْنُ عِيسَى (وَاللَّفْظُ لِهَارُونَ وَأَحْمَدَ). (قَالَ أَبُو الطَّاهِرِ أَخْبَرَنَا وَقَالَ الآخَرَانِ حَدَّثَنَا) ابْنُ وَهْبٍ، أَخْبَرَنِي مَخْرَمَةُ، عَنْ أَبِيهِ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ عَمْرَةَ، أَنَّهَا سَمِعَتْ عَائِشَةَ تُحَدِّثُ أَنَّهَا سَمِعَتْ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «لا تُقْطَعُ الْيَدُ إِلاَّ فِي رُبْعِ دِينَارٍ فَمَا فَوْقَهُ».

[3852–4]. (Dar al-Salam 4179–4180) Bishr ibn al-Ḥakam al-ʿAbdī narrated to me: ʿAbd al-ʿAzīz ibn Muhammad narrated; from Yazīd ibn ʿAbdullāh ibn al-Hād; from Abu Bakr ibn Muhammad; from ʿAmrah; from ʿĀ'ishah; that she heard the Prophet (peace be upon him) say: **'A thief's hand may not be cut unless he steals one-quarter of a dīnār or more'.**

حَدَّثَنِي بِشْرُ بْنُ الْحَكَمِ الْعَبْدِيُّ، حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ، عَنْ يَزِيدَ بْنِ عَبْدِ اللهِ بْنِ الْهَادِ، عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ، أَنَّهَا سَمِعَتِ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «لا تُقْطَعُ يَدُ السَّارِقِ إِلاَّ فِي رُبْعِ دِينَارٍ فَصَاعِدًا».

Isḥāq ibn Ibrāhīm, Muhammad ibn al-Muthannā and Isḥāq ibn Manṣūr narrated: all from Abu ʿĀmir al-ʿAqadī; ʿAbdullāh ibn Jaʿfar narrated; a descendant of al-Miswar ibn Makhramah; from Yazīd ibn ʿAbdullāh ibn al-Hād; with the chain of transmission: **the same text.**

وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَإِسْحَاقُ بْنُ مَنْصُورٍ، جَمِيعًا عَنْ أَبِي عَامِرٍ الْعَقَدِيِّ، حَدَّثَنَا عَبْدُ اللهِ بْنُ جَعْفَرٍ، مِنْ وَلَدِ الْمِسْوَرِ بْنِ مَخْرَمَةَ، عَنْ يَزِيدَ بْنِ عَبْدِ اللهِ بْنِ الْهَادِ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3853–5]. (Dar al-Salam 4181) Muhammad ibn ʿAbdullāh ibn Numayr narrated:[iv] Ḥumayd ibn ʿAbd al-Raḥmān al-Ru'āsī narrated; from Hishām ibn ʿUrwah; from his father; from ʿĀ'ishah. She said: **'During the Prophet's lifetime no hand of a thief was cut for anything less than the value of a shield: a buckler or body armour. Both were items of value'.**

وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْرٍ، حَدَّثَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ الرُّؤَاسِيُّ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: لَمْ تُقْطَعْ يَدُ سَارِقٍ فِي عَهْدِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي أَقَلَّ مِنْ ثَمَنِ الْـمِجَنِّ: حَجَفَةٍ أَوْ تُرْسٍ. وَكِلاَهُمَا ذُو ثَمَنٍ.

[3854–000]. (Dar al-Salam 4182) ʿUthmān ibn Abi Shaybah narrated:[v] ʿAbdah ibn Sulaymān and Ḥumayd ibn ʿAbd al-Raḥmān narrated [H]. Also, Abu Bakr ibn Abi Shaybah narrated; ʿAbd al-Raḥīm ibn Sulaymān narrated [H]. And, Abu Kurayb narrated; Abu Usāmah narrated; all from Hishām; with the same chain of transmission: **a similar text to the narration of Ibn Numayr from ʿAbd al-Raḥmān al-Ru’āsī. In ʿAbd al-Raḥīm’s and Abu Usāmah’s narrations, she said: ‘It had its value at the time’.**

وَحَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، أَخْبَرَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، وَحُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ، ح. وَحَدَّثَنَا أَبُو كُرَيْبٍ، حَدَّثَنَا أَبُو أُسَامَةَ، كُلُّهُمْ عَنْ هِشَامٍ، بِهَذَا الإِسْنَادِ: نَحْوَ حَدِيثِ ابْنِ نُمَيْرٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الرُّؤَاسِيِّ. وَفِي حَدِيثِ عَبْدِ الرَّحِيمِ وَأَبِي أُسَامَةَ: وَهُوَ يَوْمَئِذٍ ذُو ثَمَنٍ.

[3855–6]. (Dar al-Salam 4183) Yaḥyā ibn Yaḥyā narrated:[vi] he said: I read out to Mālik; from Nāfiʿ; from Ibn ʿUmar; that **‘God’s Messenger cut [the hand of] a thief for stealing a buckler worth three dirhams’.**

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَطَعَ سَارِقًا فِي مِجَنٍّ، قِيمَتُهُ ثَلاَثَةُ دَرَاهِمَ.

[3856–000]. (Dar al-Salam 4184) Qutaybah ibn Saʿīd and Ibn Rumḥ narrated; from al-Layth ibn Saʿd [H]. Also, Zuhayr ibn Ḥarb and Ibn al-Muthannā narrated: both said: Yaḥyā (who is al-Qaṭṭān) narrated [H]. And, Ibn Numayr narrated; my father narrated [H]. Further, Abu Bakr ibn Abi Shaybah narrated; ʿAlī ibn Mushir narrated; all from ʿUbaydullāh [H]. Also, Zuhayr ibn Ḥarb narrated to me; Ismāʿīl (meaning ibn ʿUlayyah) narrated [H]. And, Abu al-Rabīʿ and Abu Kāmil narrated: both said: Ḥammād narrated [H]. Further, Muhammad ibn Rāfiʿ narrated to me; ʿAbd al-Razzāq narrated; Sufyān reported; from Ayyūb al-Sakhtiyānī, Ayyūb ibn Mūsā and Ismāʿīl ibn Umayyah [H]. Moreover, ʿAbdullāh ibn ʿAbd al-Raḥmān al-Dārimī narrated to me; Abu Nuʿaym reported; Sufyān narrated; from Ayyūb, Ismāʿīl ibn Umayyah, ʿUbaydullāh and Mūsā ibn ʿUqbah [H]. Also, Muhammad ibn Rāfiʿ narrated; ʿAbd al-Razzāq narrated; Ibn Jurayj reported; Ismāʿīl ibn Umayyah reported to me [H]. And, Abu al-Ṭāhir narrated to me; Ibn Wahb reported; from Ḥanẓalah ibn Abi Sufyān al-Jumaḥī, ʿUbaydullāh ibn ʿUmar, Mālik ibn Anas and Usāmah ibn Zayd al-Laythī; all of them from Nāfiʿ; from Ibn ʿUmar; from the Prophet (peace be upon him): **the same text narrated by Yaḥyā from Mālik. However, some of them said ‘valued’ and some said ‘priced at three dirhams’.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَابْنُ رُمْحٍ، عَنِ اللَّيْثِ بْنِ سَعْدٍ، ح. وَحَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، وَابْنُ الْمُثَنَّى قَالا: حَدَّثَنَا يَحْيَى (وَهُوَ الْقَطَّانُ) ح. وَحَدَّثَنَا ابْنُ نُمَيْرٍ، حَدَّثَنَا أَبِي ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، كُلُّهُمْ عَنْ عُبَيْدِ اللهِ، ح. وَحَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ (يَعْنِي ابْنَ عُلَيَّةَ)، ح. وَحَدَّثَنَا أَبُو الرَّبِيعِ، وَأَبُو كَامِلٍ قَالا: حَدَّثَنَا حَمَّادٌ، ح.

وَحَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا سُفْيَانُ، عَنْ أَيُّوبَ السَّخْتِيَانِيِّ، وَأَيُّوبَ بْنِ مُوسَى، وَإِسْمَاعِيلَ بْنِ أُمَيَّةَ ح. وَحَدَّثَنِي عَبْدُ اللهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ، أَخْبَرَنَا أَبُو نُعَيْمٍ، حَدَّثَنَا سُفْيَانُ، عَنْ أَيُّوبَ، وَإِسْمَاعِيلَ بْنِ أُمَيَّةَ، وَعُبَيْدِ اللهِ، وَمُوسَى بْنِ عُقْبَةَ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ، حَدَّثَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا ابْنُ جُرَيْجٍ، أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ، وَعُبَيْدِ اللهِ بْنِ عُمَرَ، وَمَالِكِ بْنِ أَنَسٍ، وَأُسَامَةَ بْنِ زَيْدٍ اللَّيْثِيِّ: كُلُّهُمْ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. بِمِثْلِ حَدِيثِ يَحْيَى عَنْ مَالِكٍ. غَيْرَ أَنَّ بَعْضَهُمْ قَالَ: قِيمَتُهُ، وَبَعْضُهُمْ قَالَ: ثَمَنُهُ ثَلاَثَةُ دَرَاهِمَ.

[3857–7]. (Dar al-Salam 4185) Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated:[vii] both said: Abu Muʿāwiyah narrated; from al-Aʿmash; from Abu Ṣāliḥ; from Abu Hurayrah. He said: **‘God’s Messenger (peace be upon him) said: “May God curse the thief: he steals an egg and his hand is cut off; or steals a rope and his hand is cut off”.’**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ قَالا: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَعَنَ اللهُ السَّارِقَ: يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ، وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ».

[3858–000]. (Dar al-Salam 4186) ʿAmr al-Nāqid, Isḥāq ibn Ibrāhīm and ʿAlī ibn Khashram narrated: all from ʿĪsā ibn Yūnus; from al-Aʿmash; with the same chain of transmission: **the same text, except for saying: ‘If he steals a rope, and if he steals an egg…’.**

حَدَّثَنَا عَمْرٌو النَّاقِدُ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَعَلِيُّ بْنُ خَشْرَمٍ، كُلُّهُمْ عَنْ عِيسَى بْنِ يُونُسَ، عَنِ الأَعْمَشِ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. غَيْرَ أَنَّهُ يَقُولُ: «إِنْ سَرَقَ حَبْلاً وَإِنْ سَرَقَ بَيْضَةً».

Text Explanation

Qadi ʿIyāḍ said: ‘God, the Exalted, has protected people’s property by legislating cutting the hand of the thief. He has not prescribed this punishment for anything else, such as embezzlement and forcible appropriation, because these instances are much fewer than theft. Also, what is taken in these other ways can be retrieved through the authorities, and can be proven relatively easily. By contrast, theft can rarely be proven. Hence, Islamic law looks at it far more seriously and prescribes a stern punishment for it, to serve as an effective deterrent. Muslims are unanimous that a thief is punished by hand cutting, but they differ on some details thereof’.

The hadiths in this chapter mention the mandatory punishment for theft and that it is enforceable when the stolen property is worth a certain amount, which during the Prophet’s lifetime was a quarter of one dīnār.[viii] Scholars differ concerning the threshold that makes the mandatory punishment enforceable, and how much it is. Some are of the view that no threshold is prescribed, and that the punishment applies whether the stolen property is large or small. This is the view of al-Shāfiʿī’s grandson. *Qadi* ʿIyāḍ attributes it to al-Ḥasan al-Baṣrī, scholars of the Ẓāhirī School and al-Khawārij. In support of their view, they cite the Qur’anic verse stipulating the punishment: ‘As for the man or the woman who is guilty of stealing, cut off their hands in requital for what they have wrought, as an exemplary punishment ordained by God’. (5: 38) They do not attach the hadiths in this chapter as a condition.

The majority of scholars said, on the basis of these authentic hadiths, that a thief’s hand can only be cut if the theft amounts to a certain threshold

or exceeds it. Scholars then differed regarding the amount of the threshold. Al-Shāfiʿī said: it is a quarter of a dīnār in gold or whatever is valued at a quarter of a dīnār, whether its price is three dirhams or more or less. No hand is cut in punishment of a theft below this amount. This is the view of many, or rather the majority of scholars. It is the view of ʿĀ'ishah, ʿUmar ibn ʿAbd al-ʿAzīz, al-Awzāʿī, al-Layth, Abu Thawr, Isḥāq and many others. It is also reported to be said by Dāwūd. Mālik, Ahmad and Isḥāq (in one report) said that a hand is cut for a theft of one quarter of one dīnār or three dirhams, or what is of either value, but not for an amount below these. Sulaymān ibn Yasār, Ibn Shibrimah, Ibn Abi Laylā and al-Ḥasan (in one report) said: No hand cutting for a theft of less than five dirhams. This is reported to have been expressed by ʿUmar ibn al-Khaṭṭāb. Abu Ḥanīfah and his disciples said that no hand cutting is done except for a theft of ten dirhams or something of that value. *Qadi* ʿIyāḍ mentions that some Companions of the Prophet considered the threshold to be four dirhams. ʿUthmān al-Battī said one dirham, al-Ḥasan said two dirhams, while al-Nakhaʿī is reported to have mentioned the threshold to be forty dirhams or four dīnārs.

The correct view is that expressed by al-Shāfiʿī and scholars sharing the same view. The Prophet himself determined the threshold in these hadiths as one quarter of one dīnār. Any other estimate is rejected as they rely on no correct basis and they disagree with the clear text of these authentic hadiths. Hadith No. 3855 mentions that the Prophet cut the hand of a thief who stole a buckler valued at three dirhams. This is understood as included in the Prophet's statement 'one quarter of a dīnār or more'. Moreover, this is a particular case, not a general one. It is not right to disregard the amount the Prophet specified as the threshold to take up this report, which is considered consistent with what he said. The same applies to the hadith No. 3853 which says that during the Prophet's lifetime: 'No hand of a thief was cut for anything less than the value of a shield'. It is understood that such value was a quarter of one dīnār. This understanding is necessary in order to

ensure consistency between this hadith and the specific amount the Prophet mentions.

Some Ḥanafī scholars and some others cite in support of their view a narration which says: ‘He enforced the cutting of a hand for a buckler worth ten dirhams’, while another report puts its price at five dirhams. This report is lacking in authenticity, which means that it may not be implemented if it is the only hadith on the subject. How can it be upheld when it is contrary to authentic hadiths which specify the threshold at one quarter of one dīnār. Moreover, it may be understood for relating a case in which the stolen item happened to be ten dirhams, not that it was a condition for the enforcement of the mandatory punishment. This narration does not imply that the figure it gives is the threshold.

In hadith No. 3857 the Prophet says: ‘May God curse the thief: he steals an egg and his hand is cut off; or steals a rope and his hand is cut off’. Some people suggested that this refers to the iron helmet people wear in war, as it is called *bayḍah* in Arabic which is the same word as egg. The rope refers to the rope which ties a boat to anchor. Each of these is worth more than a quarter of one dīnār. More careful scholars reject this explanation, considering it flimsy. They say: the iron helmet and the rope of the boat have their clear value, and they do not fit in the present context. Indeed, such usage is contrary to proper literary style. Normally, a person who takes some risk in order to gain something of value is appreciated. Disapproval is heaped on one who takes a risk for what is worthless. This shows that the context requires the mention of something of minimum value. The hadith aims to contrast the great loss of one’s hand in order to take a very small amount, which is one-quarter of one dīnār. When the situation is thus considered, this amount is as worthless as an egg or a small rope. Or perhaps the Prophet is referring to eggs and ropes in general, or that if a thief steals an egg and escapes punishment, he will continue to steal and this will eventually lead to the loss of his hand. It was the first theft of an egg that led to such loss. Alternatively, a thief may steal a rope or an egg

and the governor impose the severe penalty of cutting his hand as a matter of policy, in order to deliver a warning to the people that he is uncompromising in matters of crime and punishment. Some said that the Prophet said this hadith when the verse stating the punishment for theft was revealed in general terms, specifying no threshold. Hence, it was consistent with the apparent meaning of the verse, but God knows best.

In hadith No. 3853 it is stated that during the Prophet's lifetime, no hand cutting was done for stealing anything less than the price of 'a shield: a buckler or body armour. Both were items of value'. The value of either was one quarter of a dīnār, as stated in some versions.

In hadith No. 3857, the Prophet curses a thief. This confirms that it is permissible to curse an offender who is unidentified, because it is rendered as a curse in general, rather than being specific to a person. This is permissible as God says: 'Let God's curse befall the wrongdoers'. It is, then, not permissible to curse a particular person. *Qadi* ʿIyāḍ said that some scholars permit cursing a specific person as long as he has not received his mandatory punishment. Once the punishment has been enforced, he may not be cursed, because the punishment wipes away the offence. However, this argument is invalid in the light of the authentic hadiths prohibiting cursing. It is necessary to apply the prohibition to cursing specific people so that we can reconcile the relevant hadiths, but God knows best.

Scholars say that it is a condition for the stolen property to have been kept in a safe place. The mandatory punishment of hand cutting does not apply unless what is stolen was taken away from such a safe place. A safe place is determined by tradition: what people generally consider a safe place for a particular article. Dāwūd disagrees, as he does not consider the stolen article being in a safe place a condition for the enforceability of the mandatory punishment. Another condition is that the thief has no assumed claim to the stolen property. If he has such an assumption, the mandatory punishment is not enforced. Another condition is that the owner of the stolen property claims it.

Scholars are unanimous that a first theft is punished by cutting the thief's right hand. Al-Shāfiʿī, Mālik, Madīnah scholars, al-Zuhrī, Ahmad, Abu Thawr and other scholars said that if he steals again, his left foot is cut. A third theft cuts his left hand and fourth his right foot. Any further theft is given a discretionary punishment. Al-Shāfiʿī, Abu Ḥanīfah, Mālik and the majority of scholars said that a hand is cut at the joint between it and the arm, while a foot is cut at the joint with the shin. ʿAlī said that the foot is cut in the middle of the foot. This is also the view of Ahmad and Abu Thawr. Some early scholars said that the hand is cut at the elbow and others said at the shoulder joint, but God knows best.

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i. Related by al-Bukhari, 6789; Abu Dāwūd, 4383; al-Tirmidhī, 1445; al-Nasā'ī, 4931–4,936; Ibn Mājah, 2585.

ii. Related by al-Bukhari, 6790; Abu Dāwūd, 4384; al-Nasā'ī, 4930.

iii. Related by al-Nasā'ī, 4950, 4951, 4954 and 4955.

iv. Related by al-Bukhari, 6792.

v. Related by al-Bukhari, 6792 and 6794.

vi. Related by al-Bukhari, 6795; Abu Dāwūd, 4385; al-Nasā'ī, 4923.

vii. Related by al-Nasā'ī, 4888; Ibn Mājah, 2583.

viii. The dīnār was the gold currency and it was equal to ten dirhams, which was the silver currency.

CHAPTER 2

NO INTERCESSION IN MANDATORY PUNISHMENTS

[3859–8]. (Dar al-Salam 4187) Qutaybah ibn Saʿīd narrated:[i] Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated; al-Layth reported; from Ibn Shihāb; from ʿUrwah; from ʿĀ'ishah; that **'The people of Quraysh were disturbed about the Makhzūmī woman who had committed theft. They wondered, who will speak to God's Messenger about her? Some said: "Who will venture to speak to him other than his loved one, Usāmah?" Usāmah spoke to him, but God's Messenger (peace be upon him) said: "Are you interceding to stop a mandatory punishment decreed by God?" He then stood up and addressed the people, saying: "People, learn that what had ruined communities before you was that if one of their nobles committed theft, they would let him go free, but if a weaker person stole, they would enforce the mandatory punishment. By God, were Fāṭimah bint Muhammad to steal, I will cut [off] her hand".'**

In Ibn Rumḥ's narration: **'Communities before you were ruined because…'.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنِ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ، عَنَ عَائِشَةَ، أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْـمَرْأَةِ الْـمَخْزُومِيَّةِ الَّتِي سَرَقَتْ.

فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالُوا: وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلاَّ أُسَامَةُ، حِبُّ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَكَلَّمَهُ أُسَامَةُ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللهِ»؟ ثُمَّ قَامَ فَاخْتَطَبَ، فَقَالَ: «أَيُّهَا النَّاسُ إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ. وَايْمُ اللهِ، لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا». وَفِي حَدِيثِ ابْنِ رُمْحٍ: «إِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ».

[3860–9]. (Dar al-Salam 4188) Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me (Ḥarmalah's text) both said:[ii] Ibn Wahb reported. He said: Yūnus ibn Yazīd reported to me; from Ibn Shihāb. He said: ʿUrwah ibn al-Zubayr reported to me; from ʿĀ'ishah, the Prophet's wife, that **'The people of Quraysh were disturbed about the Makhzūmī woman who had committed theft during the Prophet's lifetime, at the time of the Victorious Expedition.**[iii] **They wondered, who will speak to God's Messenger about her? Some said: "Who will venture to speak to him other than his loved one, Usāmah ibn Zayd?" She was brought in to God's Messenger (peace be upon him), and Usāmah ibn Zayd spoke to him about her [to reduce her punishment]. God's Messenger's face changed colour, and he said [to Usāmah]: "Are you interceding to stop a mandatory punishment decreed by God?" Usāmah said to him: "Messenger of God, pray to God to forgive me". Later that afternoon, God's Messenger addressed the people, praising God as He deserves to be praised, then said: "Meanwhile, what had ruined communities before you was that if one of their nobles committed theft, they would let him go free, but if a**

weaker person stole, they would enforce the mandatory punishment. As for me, by the One who holds my soul in His hand, were Fāṭimah bint Muhammad to steal, I will cut [off] her hand". He then gave instructions concerning that woman and her hand was cut off'.

Yūnus said: Ibn Shihāb said: ʿUrwah said: ʿĀ'ishah said: **'She sincerely repented after that, and she got married. She used to come to me and I would put her requests to God's Messenger (peace be upon him)'.**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى (وَاللَّفْظُ لِحَرْمَلَةَ) قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ قَالَ: أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ، عَنِ ابْنِ شِهَابٍ قَالَ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ، عَنْ عَائِشَةَ، زَوْجِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْـمَرْأَةِ الَّتِي سَرَقَتْ فِي عَهْدِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِي غَزْوَةِ الْفَتْحِ. فَقَالُوا مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالُوا: وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلاَّ أُسَامَةُ بْنُ زَيْدٍ، حِبُّ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَأُتِيَ بِهَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَكَلَّمَهُ فِيهَا أُسَامَةُ بْنُ زَيْدٍ. فَتَلَوَّنَ وَجْهُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: «أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللهِ»؟ فَقَالَ لَهُ أُسَامَةُ: اسْتَغْفِرْ لِي يَا رَسُولَ اللهِ. فَلَمَّا كَانَ الْعَشِيُّ قَامَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَاخْتَطَبَ، فَأَثْنَى عَلَى اللهِ بِمَا هُوَ أَهْلُهُ، ثُمَّ قَالَ: «أَمَّا بَعْدُ، فَإِنَّمَا أَهْلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ. وَإِنِّي وَالَّذِي نَفْسِي بِيَدِهِ، لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا». ثُمَّ أَمَرَ بِتِلْكَ الْـمَرْأَةِ الَّتِي سَرَقَتْ فَقُطِعَتْ يَدُهَا.

قَالَ يُونُسُ: قَالَ ابْنُ شِهَابٍ: قَالَ عُرْوَةُ: قَالَتْ عَائِشَةُ: فَحَسُنَتْ تَوْبَتُهَا بَعْدُ وَتَزَوَّجَتْ. وَكَانَتْ تَأْتِينِي بَعْدَ ذَلِكَ، فَأَرْفَعُ حَاجَتَهَا إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ.

[3861–10]. (Dar al-Salam 4189) ʿAbd ibn Ḥumayd narrated:[iv] ʿAbd al-Razzāq reported; Maʿmar reported; from al-Zuhrī; from ʿUrwah; from ʿĀ'ishah. She said: **'A woman from the Makhzūm clan used to borrow articles, then she would deny having borrowed them. The Prophet (peace be upon him) ordered that her hand be cut off. Her people spoke to Usāmah ibn Zayd and he interceded with the Prophet concerning her…' he added a similar text to the narration by al-Layth and Yūnus.**

وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: كَانَتِ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ وَتَجْحَدُهُ. فَأَمَرَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنْ تُقْطَعَ يَدُهَا۔ فَأَتَى أَهْلُهَا أُسَامَةَ بْنَ زَيْدٍ فَكَلَّمُوهُ. فَكَلَّمَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فِيهَا. ثُمَّ ذَكَرَ نَحْوَ حَدِيثِ اللَّيْثِ وَيُونُسَ.

[3862–11]. (Dar al-Salam 4190) Salamah ibn Shabīb narrated:[v] al-Ḥasan ibn Aʿyan narrated; Maʿqil narrated; from Abu al-Zubayr; from Jābir; that **'A woman from the Makhzūm clan committed theft. She was brought to the Prophet (peace be upon him). She appealed to Umm Salamah, the Prophet's wife. The Prophet said: "By God, had she been Fāṭimah, I would cut [off] her hand". Her hand was cut off.'**

وَحَدَّثَنِي سَلَمَةُ بْنُ شَبِيبٍ، حَدَّثَنَا الْحَسَنُ بْنُ أَعْيَنَ، حَدَّثَنَا مَعْقِلٌ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ، أَنَّ امْرَأَةً مِنْ بَنِي مَخْزُومٍ سَرَقَتْ. فَأُتِيَ بِهَا النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَعَاذَتْ بِأُمِّ سَلَمَةَ زَوْجِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَاللهِ لَوْ كَانَتْ فَاطِمَةُ لَقَطَعْتُ يَدَهَا». فَقُطِعَتْ.

Text Explanation

In this chapter, Muslim mentions the hadiths that prohibit intercession with the aim of stopping or reducing mandatory punishments. These make clear that such interference was the cause of the ruin that afflicted the Children of Israel. Scholars are unanimous that once an offence bearing a mandatory punishment has been put to the ruler of the Muslim state, or to a judge, no intercession is permissible. Prior to that, most scholars say that intercession is permissible, if the one on whose behalf the intercession is made is not an evil person who causes harm to people. No intercession is admissible for one who is evil or one who harms others. Other offences which do not carry a specified mandatory punishment, but are left to the discretion of the judge, are open to intercession, whether they are already put up for judgement or not. These are lesser offences, and intercession is acceptable if the offender is not an evil, aggressive person. The hadiths refer to the alarm some people of the Quraysh felt at the prospect of the woman from Makhzūm, one the noblest Quraysh clans, having her hand cut off for committing theft. They wanted to speak to the Prophet but were apprehensive. Hence, they wondered: 'Who will venture to speak to him other than his loved one, Usāmah?' This highlights a certain quality of Usāmah, as it refers to his position in relation to God's Messenger (peace be upon him). The Prophet's reaction to Usāmah's intercession was to address the people and say: 'By God, were Fāṭimah bint Muhammad to steal, I will cut [off] her hand'. This confirms the permissibility of saying an oath without being asked. It is desirable if it enhances the intended meaning, as this is clear in the hadith. There are many similar examples in Hadith. We mentioned in the Book of Faith the different views of scholars regarding swearing by God's name.

Hadith No. 3861 mentions: 'A woman from the Makhzūm clan used to borrow articles, then she would deny having borrowed them. The Prophet (peace be upon him) ordered that her hand be cut off. Her people spoke to Usāmah ibn Zayd and he interceded with the Prophet concerning her…'.

Scholars said that what the hadith implies is that she had her hand cut off because of stealing, not because of denying what she borrowed. The case of borrowing is mentioned to describe the woman, not as the cause of her punishment. Muslim clearly mentions in all other hadiths that she committed theft and was given the mandatory punishment for stealing. Therefore, this hadith should be understood in the light of the others, because this is all one case. Yet a number of scholars said that this hadith is odd and contrary to the majority of narrators. Such narrations are discounted. However, other scholars point out that theft is not mentioned in this version because the narrator wanted to highlight the point of inadmissibility of intercession to reduce mandatory punishments. It is not intended to give any information about the theft.

The great majority of scholars said that a person who denies having borrowed some article is not punished by cutting off his or her hand. They explain the hadith in the same light we have mentioned. However, Ahmad and Isḥāq said that this offence also incurs cutting off the person's hand.

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i. Related by al-Bukhari, 3475, 6788 and in shorter versions 3732 and 6787; Abu Dāwūd, 4373; al-Tirmidhī, 1430; al-Nasā'ī, 4914; Ibn Mājah, 2547.

ii. Related by al-Bukhari, 4304 and in a shorter version, 2648 and 6800; Abu Dāwūd in a similar and shorter version, 4396; al-Nasā'ī, 4917 and 4918.

iii. The Victorious Expedition refers to the military operation which ensured the takeover of Makkah by the Prophet. It involved only a small skirmish.

iv. Related by Abu Dāwūd, 4374.

v. Related by al-Nasā'ī, 4906.

CHAPTER 3

MANDATORY PUNISHMENT FOR ADULTERY

[3863–12]. (Dar al-Salam 4191) Yaḥyā ibn Yaḥyā al-Tamīmī narrated:[i] Hushaym reported; from Manṣūr; from al-Ḥasan; from Ḥiṭṭān ibn ʿAbdullāh al-Raqāshī; from ʿUbādah ibn al-Ṣāmit. He said: **‘God’s Messenger (peace be upon him) said: “Learn from me! Learn from me! God has opened another way for them: a virgin with a virgin - one hundred lashes and exile for one year; and a married one with a married one – a hundred lashes and stoning”.’**

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ، أَخْبَرَنَا هُشَيْمٌ، عَنْ مَنْصُورٍ، عَنِ الْحَسَنِ، عَنْ حِطَّانَ بْنِ عَبْدِ اللهِ الرَّقَاشِيِّ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «خُذُوا عَنِّي. خُذُوا عَنِّي. قَدْ جَعَلَ اللهُ لَهُنَّ سَبِيلاً: الْبِكْرُ بِالْبِكْرِ: جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ، وَالثَّيِّبُ بِالثَّيِّبِ: جَلْدُ مِائَةٍ وَالرَّجْمُ».

ʿAmr al-Nāqid narrated: Hushaym narrated; Manṣūr reported; with the same chain of transmission: **the same text.**

وَحَدَّثَنَا عَمْرٌو النَّاقِدُ، حَدَّثَنَا هُشَيْمٌ، أَخْبَرَنَا مَنْصُورٌ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

[3864–13]. (Dar al-Salam 4192) Muhammad ibn al-Muthannā and Ibn Bashshār narrated: both from ʿAbd al-Aʿlā; Ibn al-Muthannā said ʿAbd al-Aʿlā narrated; Saʿīd narrated; from Qatādah; from al-Ḥasan; from Ḥiṭṭān ibn ʿAbdullāh al-Raqāshī; from ʿUbādah ibn al-Ṣāmit. He said: **'When the Prophet received revelations, he would feel the stress and his face would look very serious. One day he received revelations and was in such condition. When it was over and he felt the relief, he said: 'Learn from me. God has opened another way for them: a married one with a married one, and a virgin with a virgin. For the married one: a hundred lashes then stoning; and for the virgin: one hundred lashes followed by exile for a year'.**

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ، جَمِيعًا عَنْ عَبْدِ الأَعْلَى. قَالَ ابْنُ الْمُثَنَّى حَدَّثَنَا عَبْدُ الأَعْلَى، حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ حِطَّانَ بْنِ عَبْدِ اللهِ الرَّقَاشِيِّ، عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: كَانَ نَبِيُّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِذَا أُنْزِلَ عَلَيْهِ كُرِبَ لِذَلِكَ، وَتَرَبَّدَ لَهُ وَجْهُهُ. قَالَ: فَأُنْزِلَ عَلَيْهِ ذَاتَ يَوْمٍ، فَلُقِيَ كَذَلِكَ. فَلَمَّا سُرِّيَ عَنْهُ قَالَ: «خُذُوا عَنِّي. فَقَدْ جَعَلَ اللهُ لَهُنَّ سَبِيلاً. الثَّيِّبُ بِالثَّيِّبِ وَالْبِكْرُ بِالْبِكْرِ. الثَّيِّبُ: جَلْدُ مِائَةٍ، ثُمَّ رَجْمٌ بِالْحِجَارَةِ. وَالْبِكْرُ جَلْدُ مِائَةٍ، ثُمَّ نَفْيُ سَنَةٍ».

[3865–14]. (Dar al-Salam 4193) Muhammad ibn al-Muthannā and Ibn Bashshār narrated: both said: Muhammad ibn Jaʿfar narrated; Shuʿbah narrated [H]. Also, Muhammad ibn Bashshār narrated; Muʿādh ibn Hishām narrated; my father narrated; both from Qatādah; with the same chain of transmission: **however, in their hadith, the Prophet says: 'A virgin is flogged and exiled, and a**

married one is flogged and stoned’. They mention neither a year nor a hundred.

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْـمُثَنَّى، وَابْنُ بَشَّارٍ قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ، حَدَّثَنِي أَبِي، كِلاَهُمَا عَنْ قَتَادَةَ، بِهَذَا الإِسْنَادِ. غَيْرَ أَنَّ فِي، حَدِيثِهِمَا: «الْبِكْرُ يُجْلَدُ وَيُنْفَى، وَالثَّيِّبُ يُجْلَدُ وَيُرْجَمُ». لاَ يَذْكُرَانِ سَنَةً وَلاَ مِائَةً

Text Explanation

In Hadiths No. 3863 and No. 3864, the Prophet says: ‘God has opened another way for them’. He is referring to the Qur’anic verse that says: ‘As for those of your women who are guilty of gross immoral conduct, call upon four from among you to bear witness against them. If they so testify, then confine the guilty women to their houses until death takes them or God opens another way for them’. (4: 15) The Prophet thus explains that this is the way God has opened.

Scholars differ in their views about this Qur’anic verse, with some saying that it is a clear and valid ruling, and this hadith provides an explanation for it. Others say that it is abrogated by the Qur’anic verse in Surah 24, Light, which says: ‘As for the adulteress and the adulterer, flog each of them with a hundred stripes, and let not compassion for them keep you from [carrying out] this law of God, if you truly believe in God and the Last Day; and let a number of believers witness their punishment’. (24: 2) Other scholars said that the verse in Surah 24 is concerned with virgin adulterers and the one in Surah 4 with married ones.

Scholars are unanimous that the mandatory punishment for unmarried adulterers is one hundred lashes and for married ones it is stoning. All Muslims agree on this, except for what *Qadi* ʿIyāḍ and others mention whereby al-Khawārij and some of the Muʿtazilah, including al-Naẓẓām and his disciples, do not uphold the punishment of stoning. Scholars also differ

concerning flogging the married adulterer before stoning, with some saying that both punishments are due. This is the view of ʿAlī ibn Abi Ṭālib, al-Ḥasan al-Baṣrī, Isḥāq ibn Rāhawayh, Dāwūd and Ẓāhirī scholars as well as some Shāfiʿī scholars. The great majority of scholars, however, say that what is mandatory is the stoning only. *Qadi* ʿIyāḍ mentions that some Hadith scholars say that the two punishments are enforceable if the adulterer is a mature married man, but only stoning is enforceable if he is a young married man. This is wrong and without basis. The view of the majority of scholars is based on the fact that many hadiths show that the Prophet applied only the stoning, as in the case of Māʿiz and the Ghāmidī woman. Also, the Prophet said to one of his Companions: 'Unays, go tomorrow to this man's wife. If she confesses, stone her'. They add that the hadith that requires both flogging and stoning was abrogated, as it was in the early stage.

The Prophet says in these hadiths that an unmarried adulterer is also punished by 'exile for a year'. This gives evidence in support of the view of al-Shāfiʿī and the majority of scholars that the adulterer, man and woman, must be sent into exile for a year. Al-Ḥasan said that exile is not obligatory. Mālik and al-Awzāʿī said that women are not sent into exile. The same is reported from ʿAlī. They argue that her exile puts her at risk and exposes her to temptation. This is the reason a woman is not permitted to travel unless she is accompanied by a close relative. Al-Shāfiʿī's view is based on Hadith 3863 in which the Prophet says: 'a virgin with a virgin one hundred lashes and exile for one year'. As for slaves, males or females, committing adultery, al-Shāfiʿī gives three views. The first is that each will be sent into exile for a year, according to the apparent meaning of the hadith. This is also the view of Sufyān al-Thawrī, Abu Thawr, Dāwūd and Ibn Jarīr. The second view is that their exile is for half a year, based on the Qur'anic verse that says: 'If after their marriage, they are guilty of gross immoral conduct, they shall be liable to half the penalty to which free women are liable'. (4: 25) This is the most correct view, according to our scholars. This verse

restricts the import of the hadith and according to scholars of legal theory, this is perfectly acceptable. If one Qur'anic statement may restrict the import of another Qur'anic statement, it may do the same with a hadith. The third view is that a slave, whether male or female, is not exiled in punishment for adultery. This is the view of al-Ḥasan al-Baṣrī, Ḥammād, Mālik, Ahmad and Isḥāq, based on the hadith concerning a female slave who commits adultery. In this hadith, the Prophet says: 'flog her'. He did not mention her exile. Moreover, sending a slave into exile punishes his master, who has nothing to do with the offence. Shāfiʿī scholars say in response that this hadith does not refer to exile, while the other hadith is clear in requiring it. It must be implemented, but God knows best.

In explaining the punishment, the Prophet says: 'a virgin with a virgin, and a married one with a married one…'. This does not stipulate a condition. A virgin who commits adultery is punishable by flogging and exile, whether his offence is committed with another virgin or with a married one. A married adulterer is punished by stoning, whether his offence is with a married person or a virgin. The expression in the hadith states the most frequent cases.

What is meant by a 'virgin' is a man or a woman who has not had sexual intercourse within a legitimate marriage while he or she is a sane, free adult, even though they might have had intercourse in an incorrect relationship, an invalid marriage or similar. A 'married' person is defined, for the purposes of these hadiths, as one who has had at least one full sexual intercourse in a legitimate marriage at a time when he or she was a free, sane adult. In all this, a Muslim and non-Muslim, intelligent or idiot, are treated in the same way, but God knows best.

Hadith No. 3864 says: 'When the Prophet received revelations, he would feel the stress and his face would look very serious'. Such physical change affecting the Prophet during the process of revelation was due to the fact that it was hard. God tells the Prophet: 'We shall bestow on you a weighty message'. (73: 5) The hadith also mentions 'stoning', but in Arabic

this is expressed as ‘hurling stones’. This means that using stones only is preferable, but hurling other objects is permissible.

Transmission

Hadith No. 3863 is given a second chain of transmission which states: ‘ʿAmr al-Nāqīd narrated, Hushaym narrated, Manṣūr reported with the same chain of transmission: **the same text’**. This gives us two useful points. The first is that it provides a second chain of transmission of the hadith, increasing its authenticity. The second point is that the narrator, Hushaym, is considered ‘misleading’. In the first chain of transmission he narrates the hadith ‘from Manṣūr’. This formula is unacceptable from one who is graded as ‘misleading’, unless there is some other evidence confirming the chain of transmission. This is provided in the second chain as Hushaym says ‘Manṣūr reported’ meaning that the hadith was read out from his book, by one of Manṣūr’s students in his presence when Hushaym was also in attendance. We have explained this case on several occasions.

i. Related by Abu Dāwūd, 4415 and 4416; al-Tirmidhī, 1434; Ibn Mājah, 2550.

CHAPTER 4

STONING AS THE PUNISHMENT FOR ADULTERY

[3866–15]. (Dar al-Salam 4194–4195) Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me:[i] both said: Ibn Wahb narrated; Yūnus reported to me; from Ibn Shihāb. He said: ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah reported to me; that he heard ʿAbdullāh ibn ʿAbbās say: ʿUmar ibn al-Khaṭṭāb said as he was seated on God's Messenger's platform [i.e., *minbar*]: **'God sent Muhammad (peace be upon him) with the truth and he revealed the Book to him. Among what was revealed to him was the verse mentioning the stoning. We recited, understood and appreciated this verse. God's Messenger enforced the stoning punishment and we did after him. I fear that as a long time goes by someone may say: we do not see any mention of stoning in God's Book. They would thus abandon a duty stated by God. The stoning is indeed in God's Book, binding on any man or woman who commits adultery after having been married, if the right evidence is established, or there is a pregnancy or confession'.**

حَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى، قَالا: حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شِهَابٍ قَالَ: أَخْبَرَنِي عُبَيْدُ اللهِ بْنُ عَبْدِ اللهِ بْنِ عُتْبَةَ، أَنَّهُ سَمِعَ عَبْدَ اللهِ بْنَ عَبَّاسٍ يَقُولُ: قَالَ

عُمَرُ بْنُ الْخَطَّابِ، وَهُوَ جَالِسٌ عَلَى مِنْبَرِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: إِنَّ اللهَ قَدْ بَعَثَ مُحَمَّدًا صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِالْحَقِّ، وَأَنْزَلَ عَلَيْهِ الْكِتَابَ. فَكَانَ مِمَّا أُنْزِلَ عَلَيْهِ آيَةُ الرَّجْمِ: قَرَأْنَاهَا، وَوَعَيْنَاهَا، وَعَقَلْنَاهَا. فَرَجَمَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَرَجَمْنَا بَعْدَهُ. فَأَخْشَى إِنْ طَالَ بِالنَّاسِ زَمَانٌ أَنْ يَقُولَ قَائِلٌ: مَا نَجِدُ الرَّجْمَ فِي كِتَابِ اللهِ، فَيَضِلُّوا بِتَرْكِ فَرِيضَةٍ أَنْزَلَهَا اللهُ. وَإِنَّ الرَّجْمَ فِي كِتَابِ اللهِ حَقٌّ عَلَى مَنْ زَنَى، إِذَا أَحْصَنَ مِنَ الرِّجَالِ وَالنِّسَاءِ، إِذَا قَامَتِ الْبَيِّنَةُ، أَوْ كَانَ الْحَبَلُ، أَوْ الِاعْتِرَافُ.

Abu Bakr ibn Abi Shaybah, Zuhayr ibn Ḥarb and Ibn Abi ʿUmar narrated: they said: Sufyān narrated; from al-Zuhrī; with the same chain of transmission: **the same text.**

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، وَابْنُ أَبِي عُمَرَ قَالُوا: حَدَّثَنَا سُفْيَانُ، عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ.

Text Explanation

In this hadith, ʿUmar says that the Qur'anic revelations included 'the verse mentioning the stoning. We recited, understood and appreciated it'. He is referring to the verse saying: 'If a married man or woman commit adultery, stone them totally'. This belongs to the category of abrogated text but the ruling remains applicable. There are cases where the ruling is abrogated, but the text is retained, and other cases where both ruling and text are abrogated. When a text is abrogated, it no longer has the status of the Qur'an and the rules attached to the Qur'an, such as its prohibition to be recited by a person who is in a state of ceremonial impurity. The fact that the Prophet's Companions did not write down this verse serves as clear evidence that what is abrogated is not written in any copy in the Qur'an. Moreover, that ʿUmar declared the applicability of the stoning as he was

sitting on the platform with the Prophet's Companions and other people attending, without any of them expressing disagreement, is clear evidence that the stoning punishment is confirmed. This may be cited as evidence that flogging is not added to the stoning, but this is not acceptable, because ʿUmar did not refer to the flogging, which is confirmed in the Qur'an and the Sunnah.

ʿUmar said: 'I fear that as a long time goes by someone may say: we do not see any mention of stoning in God's Book. They would thus abandon a duty stated by God'. What ʿUmar feared actually took place as al-Khawārij and others denied the stoning as we explained earlier. ʿUmar's statement indicates his insight and status. It may be that he was told this by the Prophet (peace be upon him).

He then said: 'The stoning is indeed in God's Book, binding on any man or woman who commits adultery after having been married, if the right evidence is established, or there is a pregnancy or confession'. Scholars are unanimous that the punishment of stoning is applicable only to a married adulterer, and we mentioned earlier to whom this description applies. They also agree that if clear evidence is established, then the guilty is stoned to death. The clear evidence is the testimony of four witnesses who are men of integrity testifying to having seen the act of adultery. Nothing less than four witnesses is acceptable. They also agree that stoning is mandatory and enforceable on a married person who confesses to having committed adultery if his confession is proper and valid. They disagree concerning repeating such confession four times, and we will discuss this point.

Is pregnancy sufficient evidence of adultery? It is ʿUmar ibn al-Khaṭṭāb's view that a woman who becomes pregnant and has no husband, or master, then the mandatory punishment is enforceable. [Needless to say, the punishment in this case is flogging, not stoning.] Mālik and his disciples uphold this view, saying that a woman who becomes pregnant and is not known to have a husband or a master, and is not known to have been raped, incurs the mandatory punishment, unless she is a stranger and claims to

have a husband or a master. However, her claim of rape is unacceptable unless she cries for help at the time, before the pregnancy is confirmed.

Al-Shāfiʿī, Abu Ḥanīfah and the majority of scholars said that the mandatory punishment is not applicable to a woman merely for being pregnant, whether she has a husband or a master or not, and whether she is a stranger or not, claiming rape or not. The mandatory punishment is not enforceable except in the case of clear evidence or confession. All mandatory punishments are suspended in the case of any doubt.

i. Related by al-Bukhari in a shorter version 6829 and in a longer version, 6830 and also 2462, 3928, 4021 and 7323; Abu Dāwūd, 4418; al-Tirmidhī, 1432; Ibn Mājah, 2553.

CHAPTER 5

WHEN ADULTERY IS ADMITTED

[**Note**: this chapter includes many hadiths. Rather than list them all then comment collectively on them, we will break this down into easier digestible parts, listing some hadiths with commentary before moving on to another section to deal with that in a similar fashion.]

[3867–16]. (Dar al-Salam 4196–4197) ʿAbd al-Malik ibn Shuʿayb ibn al-Layth ibn Saʿd narrated to me:[i] my father narrated to me; from my grandfather. He said: ʿUqayl narrated to me; from Ibn Shihāb; from Abu Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf and Saʿīd ibn al-Musayyib; from Abu Hurayrah; that he said: **'A Muslim man came to the Prophet when he was in the mosque. He called out and said: "Messenger of God, I have committed adultery". The Prophet turned away from him. The man turned to face him and said: "Messenger of God, I have committed adultery". The Prophet again turned away from him. He did this four times. When he had testified against himself four times, the Prophet told him to come nearer. He asked him: "Do you have any insanity?" The man said: "No". The Prophet asked him: "Have you been married?" The man said: "Yes". The Prophet said: "Take this one and stone him".'**

Ibn Shihāb said: **'Someone told me that he had heard Jābir ibn ʿAbdullāh say: "I was among those stoning him. We hurled**

stones on him at the prayer place, and when he was hurt by the stones, he ran away. We chased him to al-Ḥarrah and stoned him”.’

Al-Layth narrated: from ʿAbd al-Raḥmān ibn Khālid ibn Musāfir; from Ibn Shihāb; with the same chain of transmission: **the same text.**

وَحَدَّثَنِي عَبْدُ الْـمَلِكِ بْنُ شُعَيْبِ بْنِ اللَّيْثِ بْنِ سَعْدٍ، حَدَّثَنِي أَبِي، عَنْ جَدِّي قَالَ: حَدَّثَنِي عُقَيْلٌ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَسَعِيدِ بْنِ الْـمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ: أَتَى رَجُلٌ مِنَ الْـمُسْلِمِينَ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهُوَ فِي الْـمَسْجِدِ، فَنَادَاهُ، فَقَالَ: يَا رَسُولَ اللهِ إِنِّي زَنَيْتُ. فَأَعْرَضَ عَنْهُ. فَتَنَحَّى تِلْقَاءَ وَجْهِهِ، فَقَالَ لَهُ: يَا رَسُولَ اللهِ، إِنِّي زَنَيْتُ. فَأَعْرَضَ عَنْهُ، حَتَّى ثَنَى ذَلِكَ عَلَيْهِ أَرْبَعَ مَرَّاتٍ فَلَمَّا شَهِدَ عَلَى نَفْسِهِ أَرْبَعَ شَهَادَاتٍ، دَعَاهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «أَبِكَ جُنُونٌ»؟ قَالَ لا. قَالَ: «فَهَلْ أَحْصَنْتَ». قَالَ نَعَمْ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «اذْهَبُوا بِهِ فَارْجُمُوهُ».

قَالَ ابْنُ شِهَابٍ: فَأَخْبَرَنِي مَنْ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: فَكُنْتُ فِيمَنْ رَجَمَهُ، فَرَجَمْنَاهُ بِالْـمُصَلَّى. فَلَمَّا أَذْلَقَتْهُ الْحِجَارَةُ هَرَبَ، فَأَدْرَكْنَاهُ بِالْحَرَّةِ فَرَجَمْنَاهُ.

وَرَوَاهُ اللَّيْثُ أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ خَالِدِ بْنِ مُسَافِرٍ، عَنِ ابْنِ شِهَابٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

ʿAbdullāh ibn ʿAbd al-Raḥmān al-Dārimī narrated:[ii] Abu al-Yamān narrated; Shuʿayb reported; from al-Zuhrī; with the same chain of transmission: **the same text, and in both of these also Ibn Shihāb said: ‘Someone told me that he had heard Jābir ibn ʿAbdullāh say…’ the same as ʿUqayl said.**

وَحَدَّثَنِيهِ عَبْدُ اللهِ بْنُ عَبْدِ الرَّحْمَنِ الدَّارِمِيُّ، حَدَّثَنَا أَبُو الْيَمَانِ، أَخْبَرَنَا شُعَيْبٌ، عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ أَيْضًا. وَفِي حَدِيثِهِمَا جَمِيعًا قَالَ ابْنُ شِهَابٍ: أَخْبَرَنِي مَنْ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ: كَمَا ذَكَرَ عُقَيْلٌ.

Abu al-Ṭāhir and Ḥarmalah ibn Yaḥyā narrated to me:[iii] both said: Ibn Wahb reported; Yūnus reported to me [H]. Also, Isḥāq ibn Ibrāhīm narrated; ʿAbd al-Razzāq reported; Maʿmar and Ibn Jurayj reported; all from al-Zuhrī; from Abu Salamah; from Jābir ibn ʿAbdullāh; from the Prophet (peace be upon him): **a similar hadith to ʿUqayl's narration from al-Zuhrī, from Saʿīd and Abu Salamah, from Abu Hurayrah.**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى، قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، وَابْنُ جُرَيْجٍ: كُلُّهُمْ عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. نَحْوَ رِوَايَةِ عُقَيْلٍ، عَنِ الزُّهْرِيِّ، عَنْ سَعِيدٍ وَأَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ.

Text Explanation

This hadith speaks about the man who confessed having committed adultery. The Prophet turned away from him, but he kept coming back from different sides, repeating his confession four times. The Prophet asked him whether he suffered any insanity, and he confirmed he had none. The Prophet confirmed that he was married before ordering his punishment of stoning. The hadith is taken by Abu Ḥanīfah, all Kufi scholars, Ahmad and others as evidence that a confession of adultery is not confirmed, and the mandatory punishment does not apply until the person concerned has confessed his offence four times. Mālik, al-Shāfiʿī and others maintain that

a single confession confirms the offence and the mandatory punishment becomes enforceable. They cite the hadith in which the Prophet says to one of his Companions: ‘Unays, go to this man’s wife tomorrow. If she confesses, stone her’. He did not specify a number of confessions. Also the hadith concerning the Ghāmidī woman does not mention that she confessed four times. Ibn Abi Laylā stipulates a condition that the offender makes his confession four times and on four different occasions.

The Prophet asks the man whether he suffered any insanity. He wanted to ascertain his condition, because in most cases a person does not insist on admitting a crime that incurs the death penalty without being so asked, particularly when it is always open to him or her to sincerely repent their offence, and have their sin wiped clean as a result. In hadith No. 3872, in a section of this chapter that follows, the Prophet asked the man’s people, meaning those of his clan, and they said that they knew nothing wrong with him. The Prophet did this in order to make absolutely sure of his condition, and to protect the life of every Muslim. It also indicates that an admission of guilt by an insane person is invalid and that no punishment applies to such a person. This is unanimously agreed upon.

The Prophet also asked him whether he had married, which means that the ruler, or the judge, should make sure that all the conditions for the infliction of the stoning punishment are met, whether by confession or evidence. The hadith also shows that a person is responsible for whatever he confesses. Hadith No. 3867 mentions that the man reconfirmed his admission of guilt four times. The hadith further shows that suggestion is made to a person who admits committing adultery to withdraw his admission. If he does, the withdrawal is accepted. When the man insisted and repeated his confession four times, the Prophet told his Companions: ‘Take this one and stone him’. This means that it is permissible for the ruler to delegate responsibility for the infliction of a mandatory punishment. Scholars have said: No one administers a mandatory punishment except the ruler or the one to whom such responsibility is delegated.

The hadith also shows that stoning is sufficient as a punishment, and that no flogging is administered with the stoning. We mentioned the different views on this point earlier.

The narrator then says: ‘We hurled stones on him at the prayer place’. Al-Bukhari and other scholars mentioned that this is evidence that the prayer place where funeral and Eid prayers are offered does not have the same rulings as a mosque, unless it has been consecrated as a mosque. Had it had the same rulings as a mosque, no stoning would have taken place in it because that would stain the place with blood and a dead body. The prayer place in this narration is that where the funeral prayer is offered. Hence, the place is specified in hadith No. 3872 as Baqīʿ al-Gharqad, which is the burial place in Madīnah. Al-Dārimī, a Shāfiʿī scholar, asks the question about whether the prayer place where the Eid Prayer and other prayers are offered is it to be treated as a mosque or not? There are two views on this point and the more correct one is that it is not given the status of a mosque.

The hadith then mentions: ‘When he was hurt by the stones, he ran away. We chased him to al-Ḥarrah and stoned him’. Scholars hold different views concerning a married adulterer who admits his guilt and the mandatory punishment is started, but he runs away: should he be followed to complete the punishment? Al-Shāfiʿī, Ahmad and others say that he is left without being chased. He will subsequently be spoken to. If he retracts his confession, the punishment is terminated and he is left to himself. If he reconfirms his confession, he is stoned. In one report, Mālik says, as well as other scholars: he is chased and stoned. Al-Shāfiʿī and those scholars of the same view cite in support the hadith related by Abu Dāwūd which mentions that the Prophet said to them: ‘You could have better left him until I have reconsidered his case’. In another version: ‘You could have better left him. He might have repented, and God would accept his repentance’. Scholars who took the other view argue that the Prophet did not charge them with killing him after he had fled. Al-Shāfiʿī and other scholars responded to this argument saying that he did not say that he retracted his confession. His

confession is already established and cannot be overlooked unless he retracts. We only say that when such a person runs away, he should not be chased. He may wish to retract his confession, and a chance to do so should be given to him. We do not say that running away forfeits his punishment, but God knows best.

[3868–17]. (Dar al-Salam 4198) Abu Kāmil Fuḍayl ibn Ḥusayn al-Jaḥdarī narrated to me:[iv] Abu ʿAwānah narrated; from Simāk ibn Ḥarb; from Jābir ibn Samurah. He said: **‘I saw Māʿiz ibn Mālik when he was brought to the Prophet (peace be upon him): he was a short, muscular man, with no upper garment. He testified against himself four times, that he committed adultery. God’s Messenger said to him: “Might you have done something?” He said: “No, by God, the wicked one has committed adultery. He inflicted the punishment of stoning”. He then addressed the people and said: “Will it be that whenever we travel to fight for God’s cause, someone who makes the sound of a billy goat stays back and gives but little. By God, If He enables me of any such, I shall indeed punish him severely”.’**

وَحَدَّثَنِي أَبُو كَامِلٍ فُضَيْلُ بْنُ حُسَيْنٍ الْجَحْدَرِيُّ، حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ: رَأَيْتُ مَاعِزَ بْنَ مَالِكٍ حِينَ جِيءَ بِهِ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: رَجُلٌ قَصِيرٌ أَعْضَلُ، لَيْسَ عَلَيْهِ رِدَاءٌ. فَشَهِدَ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ أَنَّهُ زَنَى. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «فَلَعَلَّكَ». قَالَ: لا وَاللهِ، إِنَّهُ قَدْ زَنَى الأَخِرُ. قَالَ: فَرَجَمَهُ. ثُمَّ خَطَبَ فَقَالَ: «أَلا كُلَّمَا نَفَرْنَا غَازِينَ فِي سَبِيلِ اللهِ، خَلَفَ أَحَدُهُمْ، لَهُ نَبِيبٌ كَنَبِيبِ التَّيْسِ، يَمْنَحُ أَحَدُهُمُ الْكُثْبَةَ. أَمَا وَاللهِ إِنْ يُمْكِنِّي مِنْ أَحَدِهِمْ لأُنَكِّلَنَّهُ عَنْهُ».

[3869–18]. (Dar al-Salam 4199) Muhammad ibn al-Muthannā and Ibn Bashshār narrated (Ibn al-Muthannā's text) both said:[v] Muhammad ibn Jaʿfar narrated; Shuʿbah narrated; from Simāk ibn Ḥarb. He said: **'I heard Jābir ibn Samurah say: "God's Messenger (peace be upon him) was brought a short muscular man with dishevelled hair, wearing a lower garment. He had committed adultery. The Prophet turned him away twice. He subsequently gave orders and the man was stoned. God's Messenger (peace be upon him) said: 'Is it such that whenever we travel to fight for God's cause, one of you stays back, making the sound of a billy goat and giving a maid but little. By God, If He enables me of any such, I shall indeed make of him an example'."'**

He said: 'I narrated this to Saʿīd ibn Jubayr and he said that the Prophet turned him away four times'.

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ (وَاللَّفْظُ لِابْنِ الْمُثَنَّى)، قَالا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ حَدَّثَنَا شُعْبَةُ، عَنْ سِمَاكِ بْنِ حَرْبٍ قَالَ: سَمِعْتُ جَابِرَ بْنَ سَمُرَةَ يَقُولُ: أُتِيَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِرَجُلٍ قَصِيرٍ أَشْعَثَ ذِي عَضَلاَتٍ، عَلَيْهِ إِزَارٌ. وَقَدْ زَنَى فَرَدَّهُ مَرَّتَيْنِ. ثُمَّ أَمَرَ بِهِ فَرُجِمَ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «كُلَّمَا نَفَرْنَا غَازِينَ فِي سَبِيلِ اللهِ تَخَلَّفَ أَحَدُكُمْ، يَنِبُّ نَبِيبَ التَّيْسِ، يَمْنَحُ إِحْدَاهُنَّ الْكُثْبَةَ. إِنَّ اللهَ لاَ يُمْكِنِّي مِنْ أَحَدٍ مِنْهُمْ إِلاَّ جَعَلْتُهُ نَكَالاً»، أَوْ نَكَّلْتُهُ.

قَالَ: فَحَدَّثْتُهُ سَعِيدَ بْنَ جُبَيْرٍ فَقَالَ: إِنَّهُ رَدَّهُ أَرْبَعَ مَرَّاتٍ.

[3870–000]. (Dar al-Salam 4200) Abu Bakr ibn Abi Shaybah narrated: Shabābah narrated [H]. Also, Isḥāq ibn Ibrāhīm narrated:

Abu ʿĀmir al-ʿAqadī reported; both from Shuʿbah; from Simāk; from Jābir ibn Samurah; from the Prophet (peace be upon him): **a similar text to Ibn Jaʿfar's narration. Shabābah agrees with his statement 'he turned him away twice', but in Abu ʿĀmir's narration: 'He turned him away twice or three times'.**

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا شَبَابَةُ، ح. وَحَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا أَبُو عَامِرٍ الْعَقَدِيُّ، كِلاَهُمَا عَنْ شُعْبَةَ، عَنْ سِمَاكٍ، عَنْ جَابِرِ بْنِ سَمُرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: نَحْوَ حَدِيثِ ابْنِ جَعْفَرٍ. وَوَافَقَهُ شَبَابَةُ عَلَى قَوْلِهِ: فَرَدَّهُ مَرَّتَيْنِ. وَفِي حَدِيثِ أَبِي عَامِرٍ: فَرَدَّهُ مَرَّتَيْنِ أَوْ ثَلاَثًا.

[3871–19]. (Dar al-Salam 4201) Qutaybah ibn Saʿīd and Abu Kāmil al-Jaḥdarī narrated (Qutaybah's text):[vi] both said: Abu ʿAwānah narrated; from Simāk; from Saʿīd ibn Jubayr; from Ibn ʿAbbās; that **'The Prophet (peace be upon him) said to Māʿiz ibn Mālik: "Is what I have been told about you true?" He said: "What have you been told about me?" He said: "I was told that you committed a grave sin with those people's maid". He said: "Yes. He confessed four times". The Prophet then gave orders and he was stoned'.**

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَأَبُو كَامِلٍ الْجَحْدَرِيُّ (وَاللَّفْظُ لِقُتَيْبَةَ) قَالا: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ سِمَاكٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنِ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ لِمَاعِزِ بْنِ مَالِكٍ: «أَحَقٌّ مَا بَلَغَنِي عَنْكَ»؟ قَالَ: وَمَا بَلَغَكَ عَنِّي؟ قَالَ: «بَلَغَنِي أَنَّكَ وَقَعْتَ بِجَارِيَةِ آلِ فُلاَنٍ». قَالَ نَعَمْ. قَالَ: فَشَهِدَ أَرْبَعَ شَهَادَاتٍ. ثُمَّ أَمَرَ بِهِ فَرُجِمَ.

[3872–20]. (Dar al-Salam 4202) Muhammad ibn al-Muthannā narrated to me:[vii] ʿAbd al-Aʿlā narrated to me; Dāwūd narrated; from Abu Naḍrah; from Abu Saʿīd; that **‘A man from Aslam called Māʿiz ibn Mālik came to God’s Messenger (peace be upon him) and said: “I have committed a grave sin; punish me for it”. The Prophet sent him away several times. He then enquired about him asking his people and they said: “We do not know any ill of him, except that he has committed something and he feels that nothing absolves him of it except its mandatory punishment”. He went back again to the Prophet and he ordered us to stone him. We took him to Baqīʿ al-Gharqad. We neither tied him nor dug a hole for him. We hurled on him bones, solid mud and broken pottery. He ran away and we chased him. He reached the area of al-Ḥarrah and stood facing us. We hurled stones on him until he was lifeless. Later in the afternoon the Prophet addressed us and said: “Will it be that whenever we travel to fight for God’s cause, someone stays behind with our families and makes the sound of a billy goat. I pledge that if I am brought anyone doing that, I shall indeed punish him severely”. He neither prayed for his forgiveness nor spoke ill of him’.**

حَدَّثَنِي مُحَمَّدُ بْنُ الْـمُثَنَّى، حَدَّثَنِي عَبْدُ الأَعْلَى، حَدَّثَنَا دَاوُدُ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي سَعِيدٍ، أَنَّ رَجُلاً مِنْ أَسْلَمَ، يُقَالُ لَهُ مَاعِزُ بْنُ مَالِكٍ، أَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: إِنِّي أَصَبْتُ فَاحِشَةً، فَأَقِمْهُ عَلَيَّ. فَرَدَّهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِرَارًا. قَالَ: ثُمَّ سَأَلَ قَوْمَهُ فَقَالُوا: مَا نَعْلَمُ بِهِ بَأْسًا، إِلاَّ أَنَّهُ أَصَابَ شَيْئًا يَرَى أَنَّهُ لاَ يُخْرِجُهُ مِنْهُ إِلاَّ أَنْ يُقَامَ فِيهِ الْحَدُّ. قَالَ: فَرَجَعَ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَأَمَرَنَا أَنْ نَرْجُمَهُ. قَالَ: فَانْطَلَقْنَا بِهِ إِلَى بَقِيعِ

الْغَرْقَدِ. قَالَ: فَمَا أَوْثَقْنَاهُ وَلاَ حَفَرْنَا لَهُ. قَالَ: فَرَمَيْنَاهُ بِالْعَظْمِ وَالْمَدَرِ وَالْخَزَفِ. قَالَ: فَاشْتَدَّ فَاشْتَدَدْنَا خَلْفَهُ حَتَّى أَتَى عُرْضَ الْحَرَّةِ، فَانْتَصَبَ لَنَا. فَرَمَيْنَاهُ بِجَلاَمِيدِ الْحَرَّةِ - يَعْنِي الْحِجَارَةَ - حَتَّى سَكَتَ. قَالَ: ثُمَّ قَامَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ خَطِيبًا مِنَ الْعَشِيِّ فَقَالَ: «أَوَكُلَّمَا انْطَلَقْنَا غُزَاةً فِي سَبِيلِ اللهِ تَخَلَّفَ رَجُلٌ فِي عِيَالِنَا، لَهُ نَبِيبٌ كَنَبِيبِ التَّيْسِ! عَلَيَّ أَنْ لاَ أُوتَى بِرَجُلٍ فَعَلَ ذَلِكَ إِلاَّ نَكَّلْتُ بِهِ». قَالَ: فَمَا اسْتَغْفَرَ لَهُ وَلاَ سَبَّهُ.

[3873–21]. (Dar al-Salam 4203) Muhammad ibn Ḥātim narrated to me: Bahz narrated; Yazīd ibn Zurayʿ narrated; Dāwūd narrated; with the same chain of transmission: **a text with the same meaning. He said in the hadith: ‘God’s Messenger stood up later that afternoon and he praised and glorified God’. He then said: ‘Meanwhile, how is it with some people that when we travel one of them may stay behind, making the sound of a billy goat’, but he did not say ‘with our families’.**

حَدَّثَنِي مُحَمَّدُ بْنُ حَاتِمٍ، حَدَّثَنَا بَهْزٌ، حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ، حَدَّثَنَا دَاوُدُ، بِهَذَا الإِسْنَادِ: مِثْلَ مَعْنَاهُ. وَقَالَ فِي الْحَدِيثِ: فَقَامَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِنَ الْعَشِيِّ، فَحَمِدَ اللهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: «أَمَّا بَعْدُ، فَمَا بَالُ أَقْوَامٍ إِذَا غَزَوْنَا يَتَخَلَّفُ أَحَدُهُمْ عَنَّا، لَهُ نَبِيبٌ كَنَبِيبِ التَّيْسِ». وَلَمْ يَقُلْ: «فِي عِيَالِنَا».

[3874–000]. (Dar al-Salam 4204) Surayj ibn Yūnus narrated: Yaḥyā ibn Zakariyyā’ ibn Abi Zā’idah narrated [H]. Also, Abu Bakr ibn Abi Shaybah narrated; Muʿāwiyah ibn Hishām narrated; Sufyān narrated; both from Dāwūd; with the same chain of transmission**: some of the text of this hadith, but it includes in Sufyān’s narration: ‘He admitted adultery three times’.**

وَحَدَّثَنَا سُرَيْجُ بْنُ يُونُسَ، حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّاءَ بْنِ أَبِي زَائِدَةَ، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا مُعَاوِيَةُ بْنُ هِشَامٍ، حَدَّثَنَا سُفْيَانُ، كِلاَهُمَا عَنْ دَاوُدَ، بِهَذَا الإِسْنَادِ. بَعْضَ هَذَا الْحَدِيثِ. غَيْرَ أَنَّ فِي حَدِيثِ سُفْيَانَ: فَاعْتَرَفَ بِالزِّنَى ثَلاَثَ مَرَّاتٍ.

Text Explanation

In hadith No. 3868, when Māʿiz came or was brought to the Prophet and he admitted his offence, the Prophet said to him: ‘Might you have done something? He said: No, by God, the wicked one has committed adultery’. This means that he was encouraged to retract his admission of adultery, and to refer to something lesser, as mentioned in a different hadith when he is asked: ‘Might you have only kissed, or made some gestures’. In this hadith, this is referred to as ‘done something’. The wording is indicative of what is not mentioned. The hadith clearly shows the desirability of encouraging a person admitting adultery or theft or some other offence carrying a mandatory punishment to retract his confession. Mandatory punishments are intended to be avoided wherever possible. They are unlike the rights of human beings and the financial rights of God, such as zakat and indemnity. In these, no encouragement to retract is given. Indeed retraction in these is unacceptable.

Māʿiz’s response to this encouragement was to insist on his guilt, saying: ‘The wicked one has committed adultery’. He referred to himself as ‘wicked’ because he considered his action to be abominable.

In his address to the people after this case was over, the Prophet said: ‘Will it be that whenever we travel to fight for God’s cause, someone who makes the sound of a billy goat stays back and gives but little. By God, If He enables me of any such, I shall indeed punish him severely’. The Prophet referred to the act of adultery by mentioning someone making the sound of a billy goat. He used a word which referred particularly to the sound the billy goat makes at the point of orgasm. His words, ‘gives but

little', also refers to unlawful intercourse. He warned that he would inflict an exemplary punishment on anyone who did so.

In hadith No. 3871, the Prophet asks Māʿiz: 'Is what I have been told about you true?' He said: What have you been told about me? He said: "I was told that you committed a grave sin with those people's maid". He said: Yes. He confessed four times. The Prophet then gave orders and he was stoned'. This is how the case is narrated in this version, but what is better known in other versions is that Māʿiz came to the Prophet and requested him to purify him. Scholars say that there is no contradiction between these narrations. He was brought to the Prophet, without the Prophet sending for him. In hadiths related in other anthologies: 'His people sent him to the Prophet. The Prophet said to the one who sent him: "Hazāl, had you covered him with your robe, it would have been better for you". Māʿiz was with Hazāl. When those who came with him related to the Prophet what happened, the Prophet asked him: "Is what I have been told about you true?".'

In hadith No. 3872, the narrator says: 'We neither tied nor dug a hole for him'. Yet, in No. 3876, it is stated that 'a hole was dug for him'. When this hadith mentions the case of the Ghāmidī woman, it states that 'a hole was dug for her reaching up to her chest and he told the people and they stoned her'. That Māʿiz was not tied up indicates the ruling agreed by scholars. Digging a hole for the person to be stoned is subject to different scholarly views. Mālik, Abu Ḥanīfah and Ahmad said in their better known views that no hole should be dug for either man or woman. Qatādah, Abu Thawr, Abu Yusuf and one report from Abu Ḥanīfah says that a hole is dug for each. Some Mālikī scholars said that a hole is dug for the one to be stoned on the basis of evidence, but not the one who confessed. Our Shāfiʿī scholars said that no hole is dug for a man, whether his offence is confirmed by evidence or confession. For the woman, our scholars hold three views: the first is that a hole reaching up to her chest is desirable so that she is not exposed. The second view is that it is neither encouraged nor discouraged, and it is left to

the ruler's or judge's decision. The third view, which is the more correct, is that if her adultery is confirmed by evidence, it is desirable that she is placed in a hole, but if it is confirmed by confession, no hole is dug for her, so that she can run away if she wants to retract her confession.

Scholars who say that a hole is dug for a man or woman rule on the basis that a hole was dug for the Ghāmidī woman and for Māʿiz according to one hadith. These scholars say that the other hadith stating that no hole was dug for him refers to a large hole. Scholars who say that there is no need to dig a hole base their view on hadith No. 3872 which says: 'We neither tied him nor dug a hole for him'. This view is not particularly sound because it is contrary to the hadith concerning the Ghāmidī woman and the report that a hole was dug for Māʿiz. Those who leave the matter for choice have clear evidence. The scholars who differentiate between man and woman say that the report that a hole was dug for Māʿiz merely indicates that this is permissible. However, this is rather a weak explanation. Those who do not support digging a hole also cite the hadith mentioning the two Jews who committed adultery, which will be mentioned in the next chapter. They also cite what is mentioned in hadith No. 3867 that Māʿiz ran away as stones were hurled on him. Had he been placed in a hole, he could not have run away, but God knows best.

Hadith No. 3872 mentions: 'We hurled on him bones, solid mud and broken pottery'. This supports what scholars are agreed upon whereby stoning may be done with stones, solid mud, bones, pottery, wood, etc. It is not necessarily restricted to stones. That the Prophet mentions stones in explaining the mandatory punishment does not make it a condition. The hadith mentions that the Prophet 'neither prayed for his forgiveness nor spoke ill of him'. In essence, the Prophet did not speak ill of him because the infliction of the mandatory punishment relieves the sinner of his sin. It should also be noted, however, that the Prophet did not pray for his forgiveness so as not to give the impression that one can ensure forgiveness after committing such a cardinal sin.

In these hadiths, the Prophet said to Māʿiz when he asked him to purify him of his sin: ‘Go back, seek God’s forgiveness and repent’. He said the same thing to the Ghāmidī woman when she made the same request. This makes it clear that the administration of a mandatory punishment absolves the sinner of the sin for which it is prescribed. This is clearly stated in the hadith narrated by ʿUbādah ibn al-Ṣāmit, quoting the Prophet: ‘Whoever does something of these and is punished for it in this life, atones for it’. We know of no disagreement on this point. The present hadith is also evidence that the sin of major acts of disobedience of God is waived by repentance. This is unanimously agreed upon by all Muslims, except for what we mentioned earlier that Ibn ʿAbbās states an exception regarding repentance by a murderer, but God knows best.

It may be asked: how come neither Māʿiz nor the Ghāmidī woman were content to repent, if repentance is sufficient to wipe away their sin? Instead, they insisted on having the mandatory punishment which, in their cases, was stoning to death. The answer is that the mandatory punishment ensures that the sin is cleared, particularly in their cases given the Prophet himself ordered the punishment. Repentance may be half-hearted, or not total, or fail to meet one of its conditions. In any such case, the sin may still remain. Both wanted to have their sin wiped away with absolute certainty, but God knows best.

[3875–22]. (Dar al-Salam 4205) Muhammad ibn al-ʿAlā’ al-Hamdānī narrated:[viii] Yaḥyā ibn Yaʿlā (who is Ibn al-Ḥārith al-Muḥāribī) narrated; from Ghaylān (who is Ibn Jāmiʿ al-Muḥāribī); from ʿAlqamah ibn Marthad; from Sulaymān ibn Buraydah; from his father. He said: **‘Māʿiz ibn Mālik came to the Prophet (peace be upon him) and said: “Messenger of God, purify me.” The Prophet said: “Woe to you! Go back, pray for God’s forgiveness and repent”. A short time later, he came again and**

said: “Messenger of God, purify me”. The Prophet said: “Woe to you! Go back, pray for God’s forgiveness and repent”. A short time later, he came again and said: “Messenger of God, purify me”. The Prophet said the same to him. When he did this the fourth time, the Prophet said: “What shall I purify you from?” He said: “From adultery”. God’s Messenger enquired: “Is he insane?” He was told that he was not insane. He asked: “Has he been drinking intoxicants?” A man went up to smell him and no smell of alcohol was there. The Prophet asked him: “Have you committed adultery?” He said: “Yes”. The Prophet gave orders and he was stoned.

People were of two views concerning him. Some said: “He is ruined; his sin has engulfed him”. Others said: “No repentance is better than Māʿiz’s repentance: he came to the Prophet and placed his hand in his hand and said: kill me with stones”. They remained so for two or three days. Then God’s Messenger came when they were sitting, greeted them and sat down. He said: “Pray for the forgiveness of Māʿiz ibn Mālik”. They said: “May God bestow forgiveness on Māʿiz ibn Mālik”. The Prophet said: “He has repented. Were his repentance to be divided among a whole community, it would have sufficed for them”.

He said: ‘Then a woman from Ghāmid from the Azd came to him and said: “Messenger of God, purify me”. He said: “Woe to you. Go back, seek God’s forgiveness and repent”. She said: “I feel you want to turn me away as you turned Māʿiz ibn Mālik”. He said: “What do you mean?” She said that she was pregnant after having committed adultery. The Prophet said: “Are you indeed?” She said: “Yes”. The Prophet said: “Not

until you have given birth”.’ He said: ‘A man from the Anṣār undertook taking care of her until she had delivered. He then came to the Prophet and said: The Ghāmidī woman has given birth. The Prophet said: “Then we shall not stone her and leave her child with no one to breastfeed it”. A man from the Anṣār said: “I will ensure that he is breastfed, Messenger of God”. He ordered her to be stoned’.

وَحَدَّثَنَا مُحَمَّدُ بْنُ الْعَلاَءِ الْهَمْدَانِيُّ، حَدَّثَنَا يَحْيَى بْنُ يَعْلَى (وَهُوَ ابْنُ الْحَارِثِ الْمُحَارِبِيُّ)، عَنْ غَيْلاَنَ (وَهُوَ ابْنُ جَامِعٍ الْمُحَارِبِيُّ) عَنْ عَلْقَمَةَ بْنِ مَرْثَدٍ، عَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ، عَنْ أَبِيه قَالَ: جَاءَ مَاعِزُ بْنُ مَالِكٍ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللهِ طَهِّرْنِي. فَقَالَ: «وَيْحَكَ، ارْجِعْ فَاسْتَغْفِرِ اللهَ، وَتُبْ إِلَيْهِ». قَالَ: فَرَجَعَ غَيْرَ بَعِيدٍ، ثُمَّ جَاءَ فَقَالَ: يَا رَسُولَ اللهِ طَهِّرْنِي. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَيْحَكَ. ارْجِعْ فَاسْتَغْفِرِ اللهَ، وَتُبْ إِلَيْهِ». قَالَ فَرَجَعَ غَيْرَ بَعِيدٍ، ثُمَّ جَاءَ فَقَالَ: يَا رَسُولَ اللهِ طَهِّرْنِي. فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مِثْلَ ذَلِكَ. حَتَّى إِذَا كَانَتِ الرَّابِعَةُ قَالَ لَهُ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «فِيمَ أُطَهِّرُكَ»؟ فَقَالَ: مِنَ الزِّنَى. فَسَأَلَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَبِهِ جُنُونٌ»؟ فَأُخْبِرَ أَنَّهُ لَيْسَ بِمَجْنُونٍ. فَقَالَ: «أَشَرِبَ خَمْرًا»؟ فَقَامَ رَجُلٌ فَاسْتَنْكَهَهُ، فَلَمْ يَجِدْ مِنْهُ رِيحَ خَمْرٍ. قَالَ: فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَزَنَيْتَ»؟ فَقَالَ نَعَمْ. فَأَمَرَ بِهِ فَرُجِمَ.

فَكَانَ النَّاسُ فِيهِ فِرْقَتَيْنِ: قَائِلٌ يَقُولُ: لَقَدْ هَلَكَ. لَقَدْ أَحَاطَتْ بِهِ خَطِيئَتُهُ. وَقَائِلٌ يَقُولُ: مَا تَوْبَةٌ أَفْضَلَ مِنْ تَوْبَةِ مَاعِزٍ، أَنَّهُ جَاءَ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَوَضَعَ يَدَهُ فِي يَدِهِ، ثُمَّ قَالَ اقْتُلْنِي بِالْحِجَارَةِ. قَالَ: فَلَبِثُوا بِذَلِكَ يَوْمَيْنِ أَوْ ثَلاَثَةً. ثُمَّ جَاءَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهُمْ جُلُوسٌ، فَسَلَّمَ ثُمَّ جَلَسَ، فَقَالَ: «اسْتَغْفِرُوا لِمَاعِزِ بْنِ مَالِكٍ». قَالَ: فَقَالُوا غَفَرَ اللهُ لِمَاعِزِ بْنِ مَالِكٍ. قَالَ: فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَقَدْ تَابَ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوَسِعَتْهُمْ».

قَالَ ثُمَّ جَاءَتْهُ امْرَأَةٌ مِنْ غَامِدٍ، مِنَ الأَزْدِ، فَقَالَتْ: يَا رَسُولَ اللهِ طَهِّرْنِي. فَقَالَ: «وَيْحَكِ. ارْجِعِي فَاسْتَغْفِرِي اللهَ، وَتُوبِي إِلَيْهِ». فَقَالَتْ: أَرَاكَ تُرِيدُ أَنْ تُرَدِّدَنِي كَمَا رَدَّدْتَ مَاعِزَ بْنَ مَالِكٍ. قَالَ: «وَمَا ذَاكِ»؟ قَالَتْ: إِنَّهَا حُبْلَى مِنَ الزِّنَا. فَقَالَ: «آنْتِ»؟ قَالَتْ نَعَمْ. فَقَالَ لَهَا: «حَتَّى تَضَعِي مَا فِي بَطْنِكِ». قَالَ: فَكَفَلَهَا رَجُلٌ مِنَ الأَنْصَارِ حَتَّى وَضَعَتْ. قَالَ: فَأَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ قَدْ وَضَعَتِ الْغَامِدِيَّةُ. فَقَالَ: «إِذًا لا نَرْجُمَهَا وَنَدَعَ وَلَدَهَا صَغِيرًا، لَيْسَ لَهُ مَنْ يُرْضِعُهُ». فَقَامَ رَجُلٌ مِنَ الأَنْصَارِ فَقَالَ: إِلَيَّ رَضَاعُهُ يَا نَبِيَّ اللهِ. قَالَ: فَرَجَمَهَا.

[3876–23]. (Dar al-Salam 4206) Abu Bakr ibn Abi Shaybah narrated:[ix] ʿAbdullāh ibn Numayr narrated [H]. Also, Muhammad ibn ʿAbdullāh ibn Numayr narrated (in closely similar wording); my father narrated; Bushayr ibn al-Muhājir narrated; ʿAbdullāh ibn Buraydah narrated; from his father; that **‘Māʿiz ibn Mālik al-Aslamī came to the Prophet (peace be upon him) and said: “Messenger of God, I have wronged myself and committed adultery. I want you to purify me”. The Prophet sent him away. He came back the following day and said: “Messenger of God, I have committed adultery”. He sent him back a second time. God’s Messenger sent to his people asking them: “Do you know if there is anything wrong with his mind? Do you find him strange?” They answered: We know him to be of sound mind and that he is one of our good people, as we think. [Māʿiz] came to the Prophet a third time. Again, the Prophet sent to his people enquiring about him. They told him: “There is nothing wrong with him or with his mind”. When he came a fourth**

time, a hole was dug for him and the Prophet gave instructions. He was stoned'.

He said: 'The Ghāmidī woman came and said: "Messenger of God, I have committed adultery; purify me". He sent her away. On the following day she [came again and] said: "Messenger of God, why do you send me away? You may be sending me away as you did with Māʿiz. By God, I am pregnant". He said: "Then it cannot be. Go back until you have given birth". When she delivered, she came back with the child wrapped in a cloth. She said: "Here he is; I have delivered". The Prophet said: "Go back and suckle him until he is weaned". When she had weaned him, she brought the child to him with a piece of bread in his hand. She said: "Prophet of God, I have weaned him and he has eaten ordinary food". The Prophet gave the child to a man in the Muslim community, and he gave instructions. A hole was dug for her reaching up to her chest and he told the people to stone her. Khālid ibn al-Walīd came with a stone and hurled it on her head. Her blood splashed on Khālid's face, and he cursed her. The Prophet heard his abuse of her. He said to him: "Hold on, Khālid! She has repented, and her repentance is such that it would be sufficient for one who levies tributes to ensure his forgiveness". He then gave instructions, offered the funeral prayer for her and she was buried'.

وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَبْدُ اللهِ بْنُ نُمَيْرٍ، ح. وَحَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللهِ بْنِ نُمَيْر (وَتَقَارَبَا فِي لَفْظِ الْحَدِيثِ)، حَدَّثَنَا أَبِي، حَدَّثَنَا بَشِيرُ بْنُ الْـمُهَاجِرِ، حَدَّثَنَا عَبْدُ اللهِ بْنُ

بُرَيْدَةَ، عَنْ أَبِيهِ، أَنَّ مَاعِزَ بْنَ مَالِكٍ الأَسْلَمِيَّ، أَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللهِ، إِنِّي قَدْ ظَلَمْتُ نَفْسِي وَزَنَيْتُ. وَإِنِّي أُرِيدُ أَنْ تُطَهِّرَنِي. فَرَدَّهُ، فَلَمَّا كَانَ مِنَ الْغَدِ أَتَاهُ فَقَالَ: يَا رَسُولَ اللهِ إِنِّي قَدْ زَنَيْتُ. فَرَدَّهُ الثَّانِيَةَ. فَأَرْسَلَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِلَى قَوْمِهِ فَقَالَ: «أَتَعْلَمُونَ بِعَقْلِهِ بَأْسًا، تُنْكِرُونَ مِنْهُ شَيْئًا»؟ فَقَالُوا: مَا نَعْلَمُهُ إِلاَّ وَفِيَّ الْعَقْلِ مِنْ صَالِحِينَا، فِيمَا نُرَى. فَأَتَاهُ الثَّالِثَةَ، فَأَرْسَلَ إِلَيْهِمْ أَيْضًا فَسَأَلَ عَنْهُ، فَأَخْبَرُوهُ أَنَّهُ لاَ بَأْسَ بِهِ وَلاَ بِعَقْلِهِ. فَلَمَّا كَانَ الرَّابِعَةَ حَفَرَ لَهُ حُفْرَةً، ثُمَّ أَمَرَ بِهِ فَرُجِمَ.

قَالَ: فَجَاءَتِ الْغَامِدِيَّةُ فَقَالَتْ: يَا رَسُولَ اللهِ إِنِّي قَدْ زَنَيْتُ، فَطَهِّرْنِي. وَإِنَّهُ رَدَّهَا. فَلَمَّا كَانَ الْغَدُ قَالَتْ: يَا رَسُولَ اللهِ لِمَ تَرُدُّنِي؟ لَعَلَّكَ أَنْ تَرُدَّنِي كَمَا رَدَدْتَ مَاعِزًا، فَوَاللهِ إِنِّي لَحُبْلَى. قَالَ: «إِمَّا لا، فَاذْهَبِي حَتَّى تَلِدِي». فَلَمَّا وَلَدَتْ أَتَتْهُ بِالصَّبِيِّ فِي خِرْقَةٍ، قَالَتْ: هَذَا قَدْ وَلَدْتُهُ. قَالَ: «اذْهَبِي فَأَرْضِعِيهِ حَتَّى تَفْطِمِيهِ». فَلَمَّا فَطَمَتْهُ أَتَتْهُ بِالصَّبِيِّ فِي يَدِهِ كِسْرَةُ خُبْزٍ، فَقَالَتْ: هَذَا يَا نَبِيَّ اللهِ. قَدْ فَطَمْتُهُ، وَقَدْ أَكَلَ الطَّعَامَ. فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنَ الْـمُسْلِمِينَ، ثُمَّ أَمَرَ بِهَا فَحُفِرَ لَهَا إِلَى صَدْرِهَا، وَأَمَرَ النَّاسَ فَرَجَمُوهَا. فَيُقْبِلُ خَالِدُ بْنُ الْوَلِيدِ بِحَجَرٍ، فَرَمَى رَأْسَهَا، فَتَنَضَّحَ الدَّمُ عَلَى وَجْهِ خَالِدٍ، فَسَبَّهَا. فَسَمِعَ نَبِيُّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سَبَّهُ إِيَّاهَا. فَقَالَ: «مَهْلاً يَا خَالِدُ. فَوَالَّذِي نَفْسِي بِيَدِهِ، لَقَدْ تَابَتْ تَوْبَةً لَوْ تَابَهَا صَاحِبُ مَكْسٍ لَغُفِرَ لَهُ». ثُمَّ أَمَرَ بِهَا فَصَلَّى عَلَيْهَا وَدُفِنَتْ.

[3877–24]. (Dar al-Salam 4207–4208) Abu Ghassān Mālik ibn ʿAbd al-Wāḥid al-Mismaʿī narrated to me:[x] Muʿādh (meaning Ibn Hishām) narrated; my father narrated to me; from Yaḥyā ibn Abi Kathīr; Abu Qilābah narrated to me; that Abu al-Muhallab narrated to him; from ʿImrān ibn Ḥuṣayn; that **‘A woman from Juhaynah came to the Prophet when she was pregnant, having committed adultery. She said: “Prophet of God, I have committed a punishable offence; inflict it on me”. The Prophet called in her**

guardian and said to him: “Be kind to her. When she has delivered, bring her to me”. He did so. The Prophet gave instructions and she was wrapped in her clothes. She was then stoned. He then offered the funeral prayer for her. ʿUmar said to him: “Prophet of God, you will pray for her when she had committed adultery?” He said: “She has repented, and her repentance would have been sufficient for seventy of the people of Madīnah. Is there a repentance better than that she offered her life to God Almighty?”.’

حَدَّثَنِي أَبُو غَسَّانَ مَالِكُ بْنُ عَبْدِ الْوَاحِدِ الْـمِسْمَعِيُّ، حَدَّثَنَا مُعَاذٌ (يَعْنِي ابْنَ هِشَامٍ)، حَدَّثَنِي أَبِي، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، حَدَّثَنِي أَبُو قِلاَبَةَ، أَنَّ أَبَا الْـمُهَلَّبِ، حَدَّثَهُ عَنْ عِمْرَانَ بْنِ حُصَيْنٍ، أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ، أَتَتْ نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَهِيَ حُبْلَى مِنَ الزِّنَى، فَقَالَتْ: يَا نَبِيَّ اللهِ، أَصَبْتُ حَدًّا، فَأَقِمْهُ عَلَيَّ. فَدَعَا نَبِيُّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَلِيَّهَا، فَقَالَ: «أَحْسِنْ إِلَيْهَا، فَإِذَا وَضَعَتْ فَائْتِنِي بِهَا». فَفَعَلَ، فَأَمَرَ بِهَا نَبِيُّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَشُكَّتْ عَلَيْهَا ثِيَابُهَا. ثُمَّ أَمَرَ بِهَا فَرُجِمَتْ، ثُمَّ صَلَّى عَلَيْهَا. فَقَالَ لَهُ عُمَرُ: تُصَلِّي عَلَيْهَا يَا نَبِيَّ اللهِ وَقَدْ زَنَتْ؟ فَقَالَ: «لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْـمَدِينَةِ لَوَسِعَتْهُمْ. وَهَلْ وَجَدْتَ تَوْبَةً أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلهِ تَعَالَى»؟

Abu Bakr ibn Abi Shaybah narrated: ʿAffān ibn Muslim narrated; Abān al-ʿAṭṭār narrated; Yaḥyā ibn Abi Kathīr narrated; with the same chain of transmission: **a similar text.**

وَحَدَّثَنَاهُ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَفَّانُ بْنُ مُسْلِمٍ، حَدَّثَنَا أَبَانٌ الْعَطَّارُ، حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ.

Text Explanation

Hadith No. 3875 mentions that the Prophet asked whether Māʿiz had been drinking intoxicants and that a man went up to him to smell him. Our correct and well-known view is that admission by a drunk person is accepted and what he says applies to him and against him. We understand that the enquiry about his having been drinking points out that had he been drunk, the mandatory punishment would not be inflicted on him. Mālikī scholars and the majority of scholars from Hijaz say that if a person's mouth smells of alcohol, he incurs the mandatory punishment for drinking, whether there is the necessary evidence that he has been drinking or a confession or neither. The view of al-Shāfiʿī, Abu Ḥanīfah and other scholars is that the mandatory punishment for drinking is not applicable for merely smelling of alcohol. Proper evidence or confession is required. This hadith gives no support for the view of Mālikī scholars.

The hadith mentions that a woman from Ghāmid came to the Prophet. Ghāmid is a branch of the major tribe of Juhaynah. The Prophet told her: 'Not until you have given birth'. This makes clear that a woman who is pregnant through adultery may not be punished until she has delivered. This is unanimously agreed upon, because enforcing punishment before her delivery would kill her child. The same applies whether her punishment is flogging or stoning. The hadith shows that an adulteress woman is punished by stoning if she is married, in the same way as a man. This hadith is understood to mean that the Ghāmidī woman was married, because authentic hadiths and the unanimous view of scholars agree that only married adulterers are liable to the stoning punishment. The hadith further indicates that a pregnant woman who incurs a retaliatory punishment is not punished until she has given birth. This is unanimously agreed upon. Moreover, a pregnant adulteress is neither subjected to retaliatory punishment nor the stoning punishment until she has suckled her child, or the child has been well taken care of by a different suckling mother. The

hadith further indicates that pregnancy is known and taken into consideration. This is the correct view of our school.

The hadith mentions: ‘A man from the Anṣār undertook taking care of her until she had delivered’. The Arabic word used in the hadith is *kafala*, which has two meanings: (1) provide a guarantee, and (2) take care and look after someone. Needless to say, in the context of this hadith the first meaning does not apply. It is also not permissible in cases of mandatory punishment.

In this hadith, the Prophet was informed when the woman gave birth, but he said: ‘Then we shall not stone her and leave her child with no one to breastfeed it. A man from the Anṣār said: I will ensure that he is breastfed, Messenger of God. He ordered her to be stoned’. In the next hadith, No. 3876: ‘When she delivered, she came back with the child wrapped in a cloth. She said: “Here he is; I have delivered”. The Prophet said: “Go back and suckle him until he is weaned”. When she had weaned him, she brought the child to him with a piece of bread in his hand. She said: “Prophet of God, I have weaned him and he has eaten ordinary food”. The Prophet gave the child to a man in the Muslim community, and he gave instructions for the enforcement of the mandatory punishment.

On the surface, these two reports are different. The second one is clear that the punishment was enforced after the child had been weaned and ate bread and normal food. The first report indicates that the punishment of stoning was administered shortly after childbirth. Therefore, the first report should be understood in the light of the second, because it is a single case and the two reports are authentic. The second is clearly expressed and cannot be differently interpreted, while the first is not similarly clear. Therefore, the first has to be interpreted. This means that the statement, ‘A man from the Anṣār said: I will ensure that he is breastfed’, must have been said after the child was weaned and that ‘breastfed’ in this context means ‘I undertake his upbringing’. Thus, the word ‘breastfed’ in this statement is used figuratively.

The view of the Shāfiʿī School, Ahmad, Isḥāq and the well-known view of the Mālikī School is that an adulteress is not stoned until she finds a suckling mother for her child. If she cannot find one, she herself suckles the child until it is weaned, then the punishment can be enforced. Abu Ḥanīfah and one report from Mālik said that she is stoned after delivery. The punishment is not delayed until the availability of a suckling mother. As for the Anṣārī man who looked after her, he only wanted to help her get her purification of sin quicker through the enforcement of the punishment, because she was keen to have it done without delay.

When the woman insisted on being cleansed through the enforcement of punishment, the Prophet said to her ‘Then it cannot be. Go back until you have given birth’. The Prophet meant that since she refused to keep her sin private and retract her confession so as to take the other course of repenting and seeking God’s forgiveness, the punishment could not be enforced until she had given birth.

In the same hadith, the Prophet said to Khālid ibn al-Walīd that this woman had repented, ‘and her repentance is such that it would be sufficient for one who levies tributes to ensure his forgiveness’. This statement means that the one who levies tributes commits some of the gravest sins, because he unfairly takes people’s money and property, doing it time and again. People try to protect their rights but he respects no such rights. Moreover, he spends their money to finance what is unlawful.

The hadith further shows that repentance does not exempt an adulterer from the mandatory punishment of his offence. The same applies to the mandatory punishments of theft and drinking. This is the more correct view of both the Shāfiʿī and the Mālikī Schools. The other view is that repentance exempts from punishment. Repentance by one who is guilty of armed highway robbery before he is taken exempts him from the mandatory punishment of this crime according to our school. According to Ibn ʿAbbās and other scholars, it does not.

Hadith No. 3877 states: ‘The Prophet called in her guardian and said to him: Be kind to her. When she has delivered, bring her to me’. There are two reasons for being kind to her. The first is that the Prophet feared that her relatives might feel that she had caused them disgrace and would try to hurt her. Therefore, he urged kindness to her as a warning to them against harming her. The second reason is that the Prophet felt compassion for her as she had repented her sin. He urged others to be kind to her, because normally people dislike those who commit such a sin and they may be tempted to hurt her verbally or in other ways. Therefore, he disallowed all this.

The hadith then mentions that ‘the Prophet gave instructions and she was wrapped in her clothes. She was then stoned’. She was wrapped in her clothes so that her body would not be exposed as she might turn this way or that way. Scholars agree that a woman who is to be stoned should be made to sit down. The man is stoned standing. Mālik said that he is stoned seated, and other scholars give the ruler or the judge the right to choose either position.

The hadiths mention that the Prophet gave instructions and the people stoned her. The same is the case with Māʿiz. These hadiths provide evidence in support of the view of al-Shāfiʿī, Mālik and other scholars that the ruler is not required to attend the stoning, whether the offence is proven by confession or the testimony of witnesses. Abu Ḥanīfah and Ahmad said that the ruler attends in all cases and the witnesses attend if they are the proof. The ruler starts the stoning if the offence is confirmed by confession, while if it is confirmed by witnesses, the witnesses start. Al-Shāfiʿī’s view is based on the fact that the Prophet did not attend any case of stoning, but God knows best.

Funeral Prayer for the Adulterer

Hadith No. 3876 concludes with: ‘He then gave instructions, offered the funeral prayer for her and she was buried’. And in hadith No. 3877: ‘He then offered the funeral prayer for her. ʿUmar said to him: Prophet of God, will you pray for her when she had committed adultery?’ The second of these two reports is clear, stating that the Prophet himself offered the funeral prayer for her. As for the first report, *Qadi* ʿIyāḍ mentions that the majority of narrators of Muslim’s *Ṣaḥīḥ* state it confirming that the Prophet offered the prayer for her, but al-Ṭabarī reports it in the passive voice, meaning ‘the funeral prayer was offered for her’, without mentioning that the Prophet himself did this. The same is related by Ibn Abi Shaybah and Abu Dāwūd in their anthologies. One narration by Abu Dāwūd states: ‘He then gave instructions that they offer the funeral prayer for her’. *Qadi* ʿIyāḍ adds that Muslim did not mention that the Prophet offered the funeral prayer for Māʿiz, but al-Bukhari mentions it.

Scholars express different views regarding the funeral prayer for a person who is stoned in punishment for adultery. Mālik and Ahmad said that it is discouraged for the ruler and dignitaries of the community to join it, but other people should offer it. Al-Shāfiʿī and other scholars said that the ruler and the dignitaries, as well as all others, should join it. The difference is only related to the ruler and the dignitaries. As for the rest of the community, all scholars agree that they should offer this prayer. They add that people known to be wicked and those incurring the death penalty as well as those guilty of armed robbery and other criminals are offered the funeral prayer. Al-Zuhrī, however, said: No one should offer the funeral prayer for one stoned for adultery or one who has committed suicide.

In support of their view, the majority of scholars cite this hadith which endorses al-Shāfiʿī’s view that the ruler and the dignitaries of the community offer the funeral prayer for a stoned person, like everyone else. Mālik’s disciples give two points in response: 1) They consider the hadith mentioning the Prophet’s offering this prayer for the Ghāmidī woman as lacking in authenticity because most narrators do not mention it; and 2)

They understand it as the Prophet giving instructions that such prayer is offered, or that he only supplicated for the deceased and his supplication is referred to as 'prayer' as the word originally means supplication. Both points are invalid. The first because the addition is mentioned in the authentic anthology, and an addition by a reliable narrator is acceptable. The second point is rejected because an interpretation is needed when there is some confusion or conflict in the texts, but there is none in this case. Hence, the hadith must be taken according to its apparent meaning, but God knows best.

[3878–25]. (Dar al-Salam 4209–4210) Qutaybah ibn Saʿīd narrated:[xi] Layth narrated [H]. Also, Muhammad ibn Rumḥ narrated; al-Layth reported; from Ibn Shihāb; from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah ibn Masʿūd; from Abu Hurayrah and Zayd ibn Khālid al-Juhanī that both said: **'A Bedouin came to the Prophet and said: "Messenger of God, I ask you by God to judge for me according to God's Book". The other person in the dispute, who was more learned, said: "Yes, judge between us according to God's Book, and permit me to speak". The Prophet said to him: "Speak". He said: "My son was working for this man and he committed adultery with his wife. I was told that my son would be punished by stoning. I bought his freedom from this man for one hundred sheep and a slave woman. I then asked scholars who told me that my son's punishment is one hundred lashes and exile for a year, while this man's wife incurs the stoning punishment". God's Messenger said: "By Him who holds my soul in His hand, I shall judge between you by God's Book. The slave woman and the sheep are to be returned. Your son is to have one hundred**

lashes and a year in exile. Unays, go tomorrow to this man's wife. If she confesses, then arrange her stoning". He went to her the following day, and she confessed. God's Messenger gave instructions, and she was stoned'.

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح. وَحَدَّثَنَاهُ مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنِ ابْنِ شِهَابٍ، عَنْ عُبَيْدِ اللهِ بْنِ عَبْدِ اللهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ، عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، أَنَّهُمَا قَالا: إِنَّ رَجُلاً مِنَ الأَعْرَابِ أَتَى رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللهِ أَنْشُدُكَ اللهَ إِلاَّ قَضَيْتَ لِي بِكِتَابِ اللهِ. فَقَالَ الْخَصْمُ الآخَرُ، وَهُوَ أَفْقَهُ مِنْهُ: نَعَمْ، فَاقْضِ بَيْنَنَا بِكِتَابِ اللهِ، وَائْذَنْ لِي. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «قُلْ». قَالَ: إِنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا، فَزَنَى بِامْرَأَتِهِ. وَإِنِّي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ. فَافْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ، وَوَلِيدَةٍ. فَسَأَلْتُ أَهْلَ الْعِلْمِ، فَأَخْبَرُونِي أَنَّ مَا عَلَى ابْنِي جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ، وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجْمَ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَالَّذِي نَفْسِي بِيَدِهِ، لأَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللهِ: الْوَلِيدَةُ وَالْغَنَمُ رَدٌّ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ. وَاغْدُ يَا أُنَيْسُ إِلَى امْرَأَةِ هَذَا، فَإِنِ اعْتَرَفَتْ فَارْجُمْهَا». قَالَ: فَغَدَا عَلَيْهَا، فَاعْتَرَفَتْ، فَأَمَرَ بِهَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَرُجِمَتْ.

Abu al-Ṭāhir and Ḥarmalah narrated to me: both said: Ibn Wahb reported; Yūnus reported to me [H]. Also, ʿAmr al-Nāqid narrated to me; Yaʿqūb ibn Ibrāhīm ibn Saʿd narrated; my father narrated; from Ṣāliḥ [H]. And, ʿAbd ibn Ḥumayd narrated; ʿAbd al-Razzāq reported; from Maʿmar; all from al-Zuhrī; with the same chain of transmission: **the same text.**

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ، قَالا: أَخْبَرَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، ح. وَحَدَّثَنِي عَمْرٌو النَّاقِدُ، حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ، حَدَّثَنَا أَبِي، عَنْ صَالِحٍ، ح. وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، عَنْ مَعْمَرٍ، كُلُّهُمْ عَنِ الزُّهْرِيِّ، بِهَذَا الإِسْنَادِ. نَحْوَهُ.

Text Explanation

Hadith No. 3878 mentions the case of a dispute put to the Prophet concerning a case of adultery. The Bedouin asks the Prophet to judge the case in accordance with God's Book. Needless to say the Prophet would not have judged any case in any other way. However, the hadith shows that it is recommended for a judge to be patient when a disputant appeals to him to 'judge rightly' or using any similar phrase.

The other party is described as 'more learned'. Scholars said that the narrator might have given him this description because he was in fact better learned. Alternatively, he might have meant that he had more insight in their particular case because he described it fairly well. Or perhaps he was described as such for his good manners, seeking permission to speak and being careful not overstep his position, while the other person was rough in his address, saying to the Prophet: 'I ask you by God to judge for me according to God's Book'.

The Prophet told them that he would judge in their dispute by God's Book. He might have meant he would give them the ruling God had revealed. This refers to the verse referring to women who commit adultery, saying that God will 'open another way for them'. The Prophet explained the way God opened to be stoning for married adulterers and flogging for unmarried ones. We mentioned earlier this hadith narrated by the Prophet's Companion, ʿUbādah ibn al-Ṣāmit. It is also said that the Prophet meant the invalidation of the settlement they had agreed, which entailed giving the first party one hundred sheep and a slave woman.

The man mentions that he asked scholars. This shows that it was permissible to ask learned people other than the Prophet during his lifetime, because the Prophet did not object to this. It also shows that it is permissible to ask a lesser scholar when a better one is available.

In his judgement of the case, the Prophet said: 'The slave woman and the sheep are to be returned'. He had to return them because the settlement was invalid. No compensation was to take place between the two parties. A mandatory punishment must be administered as it is; it cannot be compensated for by any sort of indemnity. The Prophet then said: 'Your son is to have one hundred lashes and a year in exile'. This is understood to mean that the man's son was a virgin and that he confessed his guilt. If he had not confessed, his father's admission of his guilt would have been unacceptable. Alternatively, the Prophet's words may be taken as a statement of the ruling in the case, meaning to say to the father: if your son is a virgin and he committed adultery, his punishment will be one hundred lashes and a year in exile.

The Prophet then said: 'Unays, go tomorrow to this man's wife. If she confesses, then arrange her stoning. He went to her the following day and she confessed. God's Messenger gave instructions and she was stoned'. Unays was a well known Companion of the Prophet. His name is Unays ibn al-Ḍaḥḥāk al-Aslamī who is also described as belonging to Syria. Ibn ʿAbd al-Barr mentioned that he was Unays ibn Marthad, but the first is his correct and well-known name. Both he and the woman belonged to the Aslam clan of the Anṣār.

Scholars of our school and others consider that Unays was sent to the woman to inform her that the man accused her of adultery with his son. He would inform her that she could claim the infliction of the punishment of false accusation on him or she could pardon him. Otherwise, she would admit her adultery, and this absolved him of a charge of false accusation. It left her liable to the mandatory punishment of adultery, which was stoning,

as she was married. Unays went to see her and she confessed. The Prophet then gave the instructions to enforce the mandatory punishment.

This interpretation is necessary, because the apparent meaning of the statement in the hadith is that the Prophet sent Unays to administer the mandatory punishment. This is not what is intended, because there is no need to look for offenders or question people about such cases. On the contrary, if the offender confesses, he is encouraged to retract his confession, as we have already explained.

Our scholars hold different views concerning the point of Unays's mission. Is it obligatory for a judge in whose presence someone accuses another of adultery to send someone to that person and inform him or her of the accusation and what they are entitled to in the matter? The more correct view is that it is obligatory.

This hadith also shows that a married adulterer is not flogged in addition to the punishment of stoning.

Transmission

The chain of transmission of hadith No. 3875 includes: 'Muhammad ibn al-ʿAlā' al-Hamdānī narrated: Yaḥyā ibn Yaʿlā (who Ibn al-Ḥārith al-Muḥāribī) narrated; from Ghaylān (who is Ibn Jāmiʿ al-Muḥāribī); from ʿAlqamah ibn Marthad'. This is how it occurs in manuscripts: 'Yaḥyā ibn Yaʿlā from Ghaylān'. *Qadi* ʿIyāḍ said:

> The correct chain should be 'Yaḥyā ibn Yaʿlā from his father from Ghaylān', adding Yaḥyā's father. This is how it is related by Abu Dāwūd and al-Nasā'ī in their *Sunan* anthologies. This is the correct version. In Abu al-ʿAlā' ibn Māhan's copy, ʿAbd al-Ghanī refers to the dropped narrator in this chain.
>
> A hadith in the Book of Zakat in Abu Dāwūd's *Sunan* has the following chain of transmission: 'ʿUthmān ibn Abi Shaybah narrated, Yaḥyā ibn Yaʿlā narrated, my father narrated, Ghaylān narrated, from

Jaʿfar, from Mujāhid, from Ibn ʿAbbās: he said…'. This chain of transmission confirms what we have just said. Al-Bukhari says in his *Tārīkh:* 'Yaḥyā ibn Yaʿlā heard hadiths from his father and from Zā'idah ibn Qudāmah.

What *Qadi* ʿIyāḍ said is correct. No one mentions that Yaḥyā ibn Yaʿlā heard from Ghaylān. They all mention that he heard from his father and Zā'idah.

Clarification: On Punishment and Repentance

In this chapter, the cases of Māʿiz ibn Mālik and the Ghāmidī woman are given in great details. Both confessed having committed adultery and both repeatedly requested that the mandatory punishment be inflicted on them. They knew that the punishment was death by stoning. The Prophet spoke well of them, and he praised their repentance, saying that it would have ensured the forgiveness of a number of people committing hard crimes. Hence, some people may wonder why the Prophet did not pardon them?

What Islam requires of anyone who commits an offence is to repent. Repentance means genuine regret of having done what is forbidden or neglected what is obligatory. This regret must be coupled with a resolve not to repeat the offence. If a person adds to this doing more of what is encouraged and recommended, then repentance is accepted by God who will most probably forgive the offence. All this may be done in private, with no one need to know about it other than God. If despite a firm resolve one repeats the offence, a renewal of repentance and a new resolve not to repeat it should ensure acceptance by God.

In the scenarios we read in this chapter, both Māʿiz and the Ghāmidī woman were full of remorse and genuinely repented their offences. This is confirmed by the Prophet himself. Yet the punishment, severe as it was, was

enforced on them. There is a small number of offences that carry mandatory punishments which are specified in the Qur'an or in hadiths. According to scholars these are adultery, false accusation of another person of adultery, theft and armed highway robbery. Three other offences are added: drinking intoxicants, apostasy and armed rebellion. When any of these seven offences is proven according to the rigorous conditions of evidence or confession Islam requires, the specified punishment for the relevant offence must be enforced. No one has the authority to waive it. Only if the proof was confession, offenders can escape punishment by retracting their confession and enforcing the punishment is obligatory as it is God's right. The Prophet did not have the authority to forego the punishment in these two cases. In our modern times, neither the head of state, nor parliament nor the highest court of justice has such an authority. Therefore, despite the fact that Māʿiz and the Ghāmidī woman genuinely repented and most probably earned God's forgiveness, they had to suffer the punishment for their offence.

It should be added that if the mandatory punishment for an offence is enforced in this life, the offender will not incur further punishment for it in the life to come. This will be explained in more details in Chapter 10.

i. Related by al-Bukhari, 6815, 6825 and 7167.
ii. Related by al-Bukhari, 5271.
iii. Related by al-Bukhari, 5270, 6814 and 6820; Abu Dāwūd, 4430; al-Tirmidhī, 1429; al-Nasā'ī, 1955.
iv. Related by Abu Dāwūd, 4422.
v. Related by Abu Dāwūd, 4423.
vi. Related by al-Tirmidhī, 1427.
vii. Related by Abu Dāwūd, 4431.
viii. Related by Abu Dāwūd, 4433.

ix. Related by Abu Dāwūd, 4442.

x. Related by Abu Dāwūd, 4440 and 4441; al-Tirmidhī, 1435; al-Nasā'ī, 1956.

xi. Related by al-Bukhari, 2314 and in a shorter version 2315. Also, 2695, 2696, 2724, 4725, 6633, 6634, 6827, 6828, 6831, 6835, 6836, 6859, 6860, 7194, 7258, 7259, 7260, 7278, 7279, 6842 and 6843. Abu Dāwūd, 4445; al-Tirmidhī, 1433; al-Nasā'ī, 5425 and 5426; Ibn Mājah, 2549.

CHAPTER 6

STONING OF JEWISH SUBJECTS FOR ADULTERY

[3879–26]. (Dar al-Salam 4211) al-Ḥakam ibn Mūsā Abu Ṣāliḥ narrated: Shuʿayb ibn Isḥāq narrated; ʿUbaydullāh reported; from Nāfiʿ; that ʿAbdullāh ibn ʿUmar reported to him that **‘God’s Messenger (peace be upon him) was brought a Jewish man and a Jewish woman who committed adultery. The Prophet went over to the Jews and asked them: “What do you find in the Torah as punishment for adultery?” They said: “We blacken their faces, place them on a camel in opposite directions and walk them around”. The Prophet said: “Bring the Torah if what you say is true”. They brought it over and read out. When they reached the verse speaking of the stoning punishment, the young man reading it placed his hand over it and read out the verses before and after it. ʿAbdullāh ibn Sallām, who was with God’s Messenger, said to the Prophet: Order him to lift his hand. When he lifted it, the verse mentioning the stoning was under it. God’s Messenger gave instructions and the two were stoned’.**

ʿAbdullāh ibn ʿUmar said: **‘I was among those stoning them. I saw him shielding her from the stones with his body’.**

حَدَّثَنِي الْحَكَمُ بْنُ مُوسَى أَبُو صَالِحٍ، حَدَّثَنَا شُعَيْبُ بْنُ إِسْحَاقَ، أَخْبَرَنَا عُبَيْدُ اللهِ، عَنْ نَافِعٍ، أَنَّ عَبْدَ اللهِ بْنَ عُمَرَ، أَخْبَرَهُ أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أُتِيَ بِيَهُودِيٍّ وَيَهُودِيَّةٍ قَدْ زَنَيَا. فَانْطَلَقَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حَتَّى جَاءَ يَهُودَ فَقَالَ: «مَا تَجِدُونَ فِي التَّوْرَاةِ عَلَى مَنْ زَنَى»؟ قَالُوا: نُسَوِّدُ وُجُوهَهُمَا وَنُحَمِّلُهُمَا وَنُخَالِفُ بَيْنَ وُجُوهِهِمَا وَيُطَافُ بِهِمَا. قَالَ: «فَأْتُوا بِالتَّوْرَاةِ إِنْ كُنْتُمْ صَادِقِينَ». فَجَاءُوا بِهَا، فَقَرَءُوهَا، حَتَّى إِذَا مَرُّوا بِآيَةِ الرَّجْمِ وَضَعَ الْفَتَى الَّذِي يَقْرَأُ يَدَهُ عَلَى آيَةِ الرَّجْمِ، وَقَرَأَ مَا بَيْنَ يَدَيْهَا وَمَا وَرَاءَهَا. فَقَالَ لَهُ عَبْدُ اللهِ بْنُ سَلاَمٍ، وَهْوَ مَعَ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: مُرْهُ فَلْيَرْفَعْ يَدَهُ فَرَفَعَهَا، فَإِذَا تَحْتَهَا آيَةُ الرَّجْمِ. فَأَمَرَ بِهِمَا رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَرُجِمَا. قَالَ عَبْدُ اللهِ بْنُ عُمَرَ كُنْتُ فِيمَنْ رَجَمَهُمَا فَلَقَدْ رَأَيْتُهُ يَقِيهَا مِنَ الْحِجَارَةِ بِنَفْسِهِ.

[3880–27]. (Dar al-Salam 4212) Zuhayr ibn Ḥarb narrated:[i] Ismāʿīl (meaning Ibn ʿUlayyah) narrated; from Ayyūb [H]. Also, Abu al-Ṭāhir narrated to me; ʿAbdullāh ibn Wahb reported; a number of scholars including Mālik ibn Anas reported to me; that Nāfiʿ reported to them; from Ibn ʿUmar that **'God's Messenger (peace be upon him) ordered the adultery punishment of stoning concerning two Jews: a man and a woman who committed adultery. The Jews brought them to God's Messenger (peace be upon him)…' they related the hadith in a similar text.**

وَحَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، حَدَّثَنَا إِسْمَاعِيلُ (يَعْنِي ابْنَ عُلَيَّةَ)، عَنْ أَيُّوبَ، ح. وَحَدَّثَنِي أَبُو الطَّاهِرِ، أَخْبَرَنَا عَبْدُ اللهِ بْنُ وَهْبٍ، أَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ، مِنْهُمْ مَالِكُ بْنُ أَنَسٍ أَنَّ نَافِعًا أَخْبَرَهُمْ، عَنِ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجَمَ فِي الزِّنَى يَهُودِيَّيْنِ، رَجُلاً وَامْرَأَةً زَنَيَا. فَأَتَتِ الْيَهُودُ إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِهِمَا. وَسَاقُوا الْحَدِيثَ بِنَحْوِهِ.

[3881–000]. (Dar al-Salam 4213) Ahmad ibn Yūnus narrated:[ii] Zuhayr narrated; Mūsā ibn ʿUqbah narrated; from Nāfiʿ; from Ibn ʿUmar; that **‘The Jews brought a man and a woman of their people to God’s Messenger (peace be upon him) for having committed adultery…’ he related the hadith in wording similar to ʿUbaydullāh ibn Nāfiʿ’s narration.**

وَحَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا زُهَيْرٌ، حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ، أَنَّ الْيَهُودَ جَاءُوا إِلَى رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِرَجُلٍ مِنْهُمْ وَامْرَأَةٍ قَدْ زَنَيَا. وَسَاقَ الْحَدِيثَ بِنَحْوِ حَدِيثِ عُبَيْدِ اللهِ عَنْ نَافِعٍ.

[3882–28]. (Dar al-Salam 4214) Yaḥyā ibn Yaḥyā and Abu Bakr ibn Abi Shaybah narrated:[iii] both from Abu Muʿāwiyah; Yaḥyā said: Abu Muʿāwiyah reported; from al-Aʿmash; from ʿAbdullāh ibn Murrah; from al-Barā’ ibn ʿĀzib. He said: **‘A Jewish man was passed by the Prophet with his face blackened and having been beaten up. He called them and said: “Is this the prescribed punishment for adultery you find in your Book?” They said: “Yes”. He called one of their rabbis and said: “I am asking you by God who revealed the Torah to Moses, is this the prescribed punishment of adultery you read in your Book?” He said: “No. Had you not asked me in this way, I would not have told you. We read it as stoning, but it became frequent among our privileged classes. Therefore, when we had such an offender we let him go, but when a weaker person offended, we enforced punishment”. We then said: “Let us agree on a punishment to apply to the higher and lower in society. Therefore, we replaced stoning by blackening their faces and flogging”. God’s**

Messenger said: “I am the first to revive Your command after they had discarded it”. He gave orders and the man was stoned. God, Mighty and Exalted, revealed: “Messenger, be not grieved by those who plunge headlong into unbelief; such as those who say with their mouths, ‘We believe’, while their hearts do not believe. Among the Jews are some who eagerly listen to falsehood, eagerly listen to other people who have not come to you. They tamper with words out of their context, and say, ‘If such-and-such [a precept] is given you, accept it; but if you are not given it, then be on your guard”. (5: 41) They would say: “Go to Muhammad: if he tells you to blacken their faces and flog them, accept it, but if he tells you to inflict stoning, be on your guard”. God revealed: “Those who do not judge in accordance with what God has revealed are indeed unbelievers”. (5: 44) “Those who do not judge in accordance with what God has revealed are indeed wrongdoers”. (5: 45) “Those who do not judge in accordance with what God has revealed are indeed transgressors”. (5: 47) All these apply to the unbelievers’.

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، كِلاَهُمَا عَنْ أَبِي مُعَاوِيَةَ. قَالَ يَحْيَى أَخْبَرَنَا أَبُو مُعَاوِيَةَ، عَنِ الأَعْمَشِ، عَنْ عَبْدِ اللهِ بْنِ مُرَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ: مُرَّ عَلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِيَهُودِيٍّ مُحَمَّمًا مَجْلُودًا، فَدَعَاهُمْ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «هَكَذَا تَجِدُونَ حَدَّ الزَّانِي فِي كِتَابِكُمْ»؟ قَالُوا نَعَمْ. فَدَعَا رَجُلاً مِنْ عُلَمَائِهِمْ فَقَالَ: «أَنْشُدُكَ بِاللهِ الَّذِي أَنْزَلَ التَّوْرَاةَ عَلَى مُوسَى، أَهَكَذَا تَجِدُونَ حَدَّ الزَّانِي فِي كِتَابِكُمْ»؟ قَالَ: لا، وَلَوْلا أَنَّكَ نَشَدْتَنِي بِهَذَا لَمْ أُخْبِرْكَ. نَجِدُهُ الرَّجْمَ، وَلَكِنَّهُ كَثُرَ فِي أَشْرَافِنَا. فَكُنَّا إِذَا أَخَذْنَا الشَّرِيفَ

تَرَكْنَاهُ، وَإِذَا أَخَذْنَا الضَّعِيفَ أَقَمْنَا عَلَيْهِ الْحَدَّ. قُلْنَا تَعَالَوْا، فَلْنَجْتَمِعْ عَلَى شَىْءٍ نُقِيمُهُ عَلَى الشَّرِيفِ وَالْوَضِيعِ. فَجَعَلْنَا التَّحْمِيمَ وَالْجَلْدَ مَكَانَ الرَّجْمِ. فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «اللَّهُمَّ إِنِّي أَوَّلُ مَنْ أَحْيَا أَمْرَكَ إِذْ أَمَاتُوهُ». فَأَمَرَ بِهِ فَرُجِمَ فَأَنْزَلَ اللهُ عَزَّ وَجَلَّ: «يَا أَيُّهَا الرَّسُولُ لاَ يَحْزُنْكَ الَّذِينَ يُسَارِعُونَ فِي الْكُفْرِ» إِلَى قَوْلِهِ «إِنْ أُوتِيتُمْ هَذَا فَخُذُوهُ» يَقُولُ ائْتُوا مُحَمَّدًا صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَإِنْ أَمَرَكُمْ بِالتَّحْمِيمِ وَالْجَلْدِ فَخُذُوهُ، وَإِنْ أَفْتَاكُمْ بِالرَّجْمِ فَاحْذَرُوا. فَأَنْزَلَ اللهُ تَعَالَى: «وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ» «وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ» «وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ» فِي الْكُفَّارِ كُلُّهَا.

[3883–000]. (Dar al-Salam 4215) Ibn Numayr and Abu Saʿīd al-Ashajj narrated: both said: Wakīʿ narrated; al-Aʿmash narrated; with the same chain of transmission: **a similar text up to ‘he gave orders and the man was stoned’. He did not mention what follows concerning the revelation of the verses.**

حَدَّثَنَا ابْنُ نُمَيْرٍ، وَأَبُو سَعِيدٍ الأَشَجُّ قَالا: حَدَّثَنَا وَكِيعٌ، حَدَّثَنَا الأَعْمَشُ، بِهَذَا الإِسْنَادِ: نَحْوَهُ، إِلَى قَوْلِهِ فَأَمَرَ بِهِ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَرُجِمَ. وَلَمْ يَذْكُرْ مَا بَعْدَهُ مِنْ نُزُولِ الآيَةِ.

[3884–28] [R]. (Dar al-Salam 4216) Hārūn ibn ʿAbdullāh narrated to me:[iv] Ḥajjāj ibn Muhammad narrated; he said: Ibn Jurayj said: Abu al-Zubayr reported to me; that he heard Jābir ibn ʿAbdullāh say: **‘The Prophet stoned a man from Aslam, a Jewish man and his woman’.**

وَحَدَّثَنِي هَارُونُ بْنُ عَبْدِ اللهِ، حَدَّثَنَا حَجَّاجُ بْنُ مُحَمَّدٍ قَالَ: قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللهِ يَقُولُ: رَجَمَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَجُلاً مِنْ أَسْلَمَ،

وَرَجُلاً مِنَ الْيَهُودِ وَامْرَأَتَهُ.

[3885–000]. (Dar al-Salam 4217) Isḥāq ibn Ibrāhīm narrated: Rawḥ ibn ʿUbādah reported; Ibn Jurayj narrated; with the same chain of transmission: **the same text, except that he said: ‘and a woman’.**

حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا رَوْحُ بْنُ عُبَادَةَ، حَدَّثَنَا ابْنُ جُرَيْجٍ، بِهَذَا الإِسْنَادِ: مِثْلَهُ. غَيْرَ أَنَّهُ قَالَ: وَامْرَأَةً.

[3886–29]. (Dar al-Salam 4218) Abu Kāmil al-Jaḥdarī narrated:[v] ʿAbd al-Wāḥid narrated; Sulaymān al-Shaybānī narrated; he said: I asked ʿAbdullāh ibn Abi Awfā [H]. Also, Abu Bakr ibn Abi Shaybah narrated (his text); ʿAlī ibn Mushir narrated; from Abu Isḥāq al-Shaybānī. He said: **I asked ʿAbdullāh ibn Abi Awfā: ‘Did God’s Messenger (peace be upon him) punish by stoning?’ He said: “Yes”. I said: “After the revelation of Surah Light [Surah 24] or before it was revealed?” He said: “I do not know”.’**

وَحَدَّثَنَا أَبُو كَامِلٍ الْجَحْدَرِيُّ، حَدَّثَنَا عَبْدُ الْوَاحِدِ، حَدَّثَنَا سُلَيْمَانُ الشَّيْبَانِيُّ قَالَ: سَأَلْتُ عَبْدَ اللهِ بْنَ أَبِي أَوْفَى ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ (وَاللَّفْظُ لَهُ)، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ قَالَ: سَأَلْتُ عَبْدَ اللهِ بْنَ أَبِي أَوْفَى: هَلْ رَجَمَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ قَالَ نَعَمْ. قَالَ: قُلْتُ بَعْدَ مَا أُنْزِلَتْ سُورَةُ النُّورِ أَمْ قَبْلَهَا؟ قَالَ: لا أَدْرِي.

[3887–30]. (Dar al-Salam 4219) ʿĪsā ibn Ḥammād al-Miṣrī narrated to me:[vi] al-Layth reported from Saʿīd ibn Abi Saʿīd; from his father; from Abu Hurayrah; that he heard him say: **‘I heard God’s**

Messenger (peace be upon him) say: “If a slave maid of any of you commits adultery and her adultery is confirmed, he should administer the mandatory punishment of flogging, without scolding or rebuke. If she commits adultery again, he should administer the mandatory punishment without scolding or rebuke. If she commits adultery a third time and her adultery is confirmed, he should sell her, even if only for a rope made of hair”.’

وَحَدَّثَنِي عِيسَى بْنُ حَمَّادٍ الْـمِصْرِيُّ، أَخْبَرَنَا اللَّيْثُ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ سَمِعَهُ يَقُولُ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «إِذَا زَنَتْ أَمَةُ أَحَدِكُمْ فَتَبَيَّنَ زِنَاهَا، فَلْيَجْلِدْهَا الْحَدَّ، وَلاَ يُثَرِّبْ عَلَيْهَا. ثُمَّ إِنْ زَنَتْ فَلْيَجْلِدْهَا الْحَدَّ، وَلاَ يُثَرِّبْ عَلَيْهَا. ثُمَّ إِنْ زَنَتِ الثَّالِثَةَ فَتَبَيَّنَ زِنَاهَا، فَلْيَبِعْهَا وَلَوْ بِحَبْلٍ مِنْ شَعَرٍ.

[3888–31]. (Dar al-Salam 4220) Abu Bakr ibn Abi Shaybah and Isḥāq ibn Ibrāhīm narrated:[vii] both from Ibn ʿUyaynah [H]. Also, ʿAbd ibn Ḥumayd narrated; Muhammad ibn Bakr al-Bursānī reported; Hishām ibn Ḥassān reported; both from Ayyūb ibn Mūsā [H]. And, Abu Bakr ibn Abi Shaybah narrated; Abu Usāmah and Ibn Numayr narrated; from ʿUbaydullāh ibn ʿUmar [H]. Further, Hārūn ibn Saʿīd al-Aylī narrated; Ibn Wahb narrated; Usāmah ibn Zayd narrated [H]. Also, Hannād ibn al-Sariy, Abu Kurayb and Isḥāq ibn Ibrāhīm narrated; from ʿAbdah ibn Sulaymān; from Muhammad ibn Isḥāq; all of these from Abu Saʿīd al-Maqburī; from Abu Hurayrah; from the Prophet (peace be upon him**)**: **the same text, except that Ibn Isḥāq said in his narration from Saʿīd from his father from Abu Hurayrah from the Prophet**

(peace be upon him) concerning flogging an adulteress slave three times if she commits adultery: ‘Then he sells her after the fourth time’.

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، جَمِيعًا عَنِ ابْنِ عُيَيْنَةَ، ح. وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا مُحَمَّدُ بْنُ بَكْرٍ الْبُرْسَانِيُّ، أَخْبَرَنَا هِشَامُ بْنُ حَسَّانَ، كِلاَهُمَا عَنْ أَيُّوبَ بْنِ مُوسَى، ح. وَحَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَبُو أُسَامَةَ، وَابْنُ نُمَيْرٍ عَنْ عُبَيْدِ اللهِ بْنِ عُمَرَ، ح. وَحَدَّثَنِي هَارُونُ بْنُ سَعِيدٍ الأَيْلِيُّ، حَدَّثَنَا ابْنُ وَهْبٍ، حَدَّثَنِي أُسَامَةُ بْنُ زَيْدٍ ح. وَحَدَّثَنَا هَنَّادُ بْنُ السَّرِيِّ، وَأَبُو كُرَيْبٍ، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، عَنْ عَبْدَةَ بْنِ سُلَيْمَانَ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ: كُلُّ هَؤُلاَءِ عَنْ سَعِيدٍ الْـمَقْبُرِيِّ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. إِلاَّ أَنَّ ابْنَ إِسْحَاقَ قَالَ فِي حَدِيثِهِ عَنْ سَعِيدٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فِي جَلْدِ الأَمَةِ إِذَا زَنَتْ ثَلاَثًا: «ثُمَّ لْيَبِعْهَا فِي الرَّابِعَةِ».

[3889–32]. (Dar al-Salam 4221) ʿAbdullāh ibn Maslamah al-Qaʿnabī narrated:[viii] Mālik narrated [H]. Also, Yaḥyā ibn Yaḥyā narrated (his text). He said: I read out to Mālik; from Ibn Shihāb; from ʿUbaydullāh ibn ʿAbdullāh; from Abu Hurayrah; that **‘God’s Messenger (peace be upon him) was asked about an unmarried slave woman who commits adultery. He said: “If she commits adultery, flog her; then if she commits adultery, flog her; then if she commits adultery again, flog her; then sell her even if for a rope”.’**

Ibn Shihāb said: **‘I am not sure whether after the third or fourth time’.**

Al-Qaʿnabī said in his narration: **‘Ibn Shihāb said that the word *ḍafīr* [which is used by the Prophet] means a rope’.**

حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ، حَدَّثَنَا مَالِكٌ، ح. وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى (وَاللَّفْظُ لَهُ)، قَالَ قَرَأْتُ عَلَى مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ عُبَيْدِ اللهِ بْنِ عَبْدِ اللهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنِ الأَمَةِ إِذَا زَنَتْ وَلَمْ تُحْصِنْ. قَالَ: «إِنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إِنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ إِنْ زَنَتْ فَاجْلِدُوهَا، ثُمَّ بِيعُوهَا وَلَوْ بِضَفِيرٍ».

قَالَ ابْنُ شِهَابٍ: لا أَدْرِي أَبَعْدَ الثَّالِثَةِ أَوِ الرَّابِعَةِ.

وَقَالَ الْقَعْنَبِيُّ فِي رِوَايَتِهِ: قَالَ ابْنُ شِهَابٍ: وَالضَّفِيرُ الْحَبْلُ.

[3890–33]. (Dar al-Salam 4222–4223) Abu al-Ṭāhir narrated: Ibn Wahb reported. He said: I heard Mālik say: Ibn Shihāb narrated to me; from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah; from Abu Hurayrah and Zayd ibn Khālid al-Juhanī; that **‘God’s Messenger (peace be upon him) was asked about a slave maid…’ the same text, but did not mention that Ibn Shihāb said that *ḍafīr* means a rope.**

وَحَدَّثَنَا أَبُو الطَّاهِرِ، أَخْبَرَنَا ابْنُ وَهْبٍ، قَالَ: سَمِعْتُ مَالِكًا يَقُولُ: حَدَّثَنِي ابْنُ شِهَابٍ، عَنْ عُبَيْدِ اللهِ بْنِ عَبْدِ اللهِ بْنِ عُتْبَةَ، عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنِ الأَمَةِ: بِمِثْلِ حَدِيثِهِمَا. وَلَمْ يَذْكُرْ قَوْلَ ابْنِ شِهَابٍ: وَالضَّفِيرُ الْحَبْلُ.

ʿAmr al-Nāqid narrated to me: Yaʿqūb ibn Ibrāhīm ibn Saʿd narrated; my father narrated to me; from Ṣāliḥ [H]. Also, ʿAbd ibn Ḥumayd narrated; ʿAbd al-Razzāq reported; Maʿmar reported; both from al-Zuhrī; from ʿUbaydullāh; from Abu Hurayrah and Zayd ibn Khālid al-Juhanī; from the Prophet: **the same text as Mālik’s narration. In both their narrations the doubt is mentioned about selling her after the third or fourth time.**

حَدَّثَنِي عَمْرٌو النَّاقِدُ، حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدٍ، حَدَّثَنِي أَبِي، عَنْ صَالِحٍ، ح. وَحَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ، أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ، كِلاَهُمَا عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللهِ، عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ. بِمِثْلِ حَدِيثِ مَالِكٍ. وَالشَّكُّ فِي حَدِيثِهِمَا جَمِيعًا فِي بَيْعِهَا فِي الثَّالِثَةِ أَوِ الرَّابِعَةِ.

Text Explanation

Hadith No. 2879 mentions the case of a Jewish man and woman who had committed adultery. The Prophet confirmed that the Torah specifies stoning as mandatory punishment for married adulterers. The hadith shows that the mandatory punishment of adultery applies to unbelievers, and that their marriage is valid, because the stoning punishment is only applicable to a married adulterer. If their marriage were not valid, they would not incur the punishment of married adulterers. The hadith further shows that unbelievers are required to observe the detailed points of the divine law. This is the correct view. Some scholars say that these details do not apply to them, while others say that prohibitions are applicable to them, but not orders. Another point the hadith makes clear is that when unbelievers put their disputes to us, we judge these on the basis of our code of law.

Mālik said that the status of *iḥṣān*, which applies to married people, is not valid for an unbeliever. The Prophet ordered their stoning because they were not subjects of the Muslim state. This is an incorrect and invalid interpretation, because they were of the people bound with a treaty with the Prophet and the Muslim community. Moreover, the Prophet ordered the stoning of the woman. It is not permissible to kill women except through the enforcement of mandatory punishment for an offence carrying the death penalty.

The Prophet asked them what ruling the Torah gives in this case. Scholars said that this question was not intended to follow their practice, or

to learn the ruling from them. It was meant to commit them to what they believed in their own scriptures. Perhaps it was revealed to him that the stoning punishment remained in the Torah they had in their hands, as they had not changed it like they had altered other things. Or perhaps he was informed of this by those of their people who embraced Islam. This is how he was aware of it when they tried to suppress it.

A question may be asked: On what basis was the punishment applied: confession or evidence? The answer is that it appears to be on the basis of confession. It is also mentioned that four witnesses testified to having seen them: with his penis in her vagina. If this is correct and the witnesses were Muslims, it is a clear case. If they were unbelievers, their testimony is discounted and this means that they must have admitted their offence of adultery.

Hadith No. 3887 says: 'If a slave maid of any of you commits adultery and her adultery is confirmed, he should administer the mandatory punishment of flogging, without scolding or rebuke'. The hadith mentions confirmation of her adultery. This may be by witnesses, or by seeing the offence, or by true knowledge according to scholars who allow judgement concerning mandatory punishments on the basis of true knowledge. This hadith makes clear that a mandatory punishment applies in the case of adultery by slave men and women, and the punishment is enforced by the master on his own slave, whether man or woman. This is the view of our Shāfiʿī School, as well as Mālik, Ahmad and the majority of scholars from the early generations of the Prophet's Companions and their successors. Abu Ḥanīfah and a number of scholars said that the master does not have that authority, but this hadith is clear in support of the view of the majority.

The hadith shows that slaves are not stoned for adultery, whether they are married or not. The Prophet mentions the mandatory punishment of flogging, but does not differentiate between married and unmarried slaves. The hadith also shows that no rebuke or scolding may be hurled on the adulterer; only the mandatory punishment is administered. The hadith adds:

‘If she commits adultery again, he should administer the mandatory punishment without scolding or rebuke. If she commits adultery a third time and her adultery is confirmed, he should sell her, even if only for a rope made of hair’. This makes it clear that a person who has been given the mandatory punishment for adultery incurs a new punishment if he reoffends. A new mandatory punishment is incurred for every time he commits the offence. However, if he commits it more than once without punishment, one mandatory punishment is enough for all past offences. The hadith further indicates the need to part company with wicked and repeatedly sinning people.

According to our scholars and the majority of scholars, the sale of the slave who commits adultery several times is recommended, not obligatory. Dāwūd and Ẓāhirī scholars said that it is mandatory. The hadith also shows that it is permissible to sell something precious for a low price. This is unanimously agreed upon if the seller is aware of it. The majority of scholars also permit it if the seller is unaware. Mālikī scholars have some difference of opinion on this point, but God knows best.

Such sale of an adulterous slave requires the seller to inform the buyer of the condition of the slave, because it is a defect, and defects must be mentioned in all transactions. It may be asked: how come the seller allows his brother to buy what he himself dislikes? The answer is that the buyer may be able to ensure that she maintains her chastity by taking her to himself, or through his authority, or by kindness to her, or he helps her get married, or in some other way, but God knows best.

i. Related by al-Bukhari, 3635 and 6841; Abu Dāwūd, 4446; al-Tirmidhī, 1436.

ii. Related by al-Bukhari, 1329, 4556 and 7332.

iii. Related by Abu Dāwūd, 4447 and 4448; Ibn Mājah in a shorter version, 2327 and 7332.

iv. Related by Abu Dāwūd, 4455.

v. Related by al-Bukhari, 6813 and 6814.

vi. Related by al-Bukhari, 2152, 2234 and 6839.

vii. Related by Abu Dāwūd, 4470 and 4471.

viii. Related by al-Bukhari, 2153, 2154, 6837, 6838, 2555 and 2556. Abu Dāwūd, 4469; al-Tirmidhī, 1433; Ibn Mājah, 2565.

CHAPTER 7

DELAYING A MANDATORY PUNISHMENT

[3891–34]. (Dar al-Salam 4224) Muhammad ibn Abu Bakr al-Muqaddamī narrated:[i] Sulaymān Abu Dāwūd narrated; Zā'idah narrated; from al-Suddī; from Saʿd ibn ʿUbaydah; from Abu ʿAbd al-Raḥmān. He said: '**ʿAlī addressed the people and said: People, enforce the mandatory punishment on your slaves, whether married or unmarried. A slave woman of God's Messenger's committed adultery. He commanded me to flog her. I found out that she had recently given birth, and I feared that if I flogged her, I might kill her. I mentioned this to the Prophet, and he said: "You have done well".**'

حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْـمُقَدَّمِيُّ، حَدَّثَنَا سُلَيْمَانُ أَبُو دَاوُدَ، حَدَّثَنَا زَائِدَةُ، عَنِ السُّدِّيِّ، عَنْ سَعْدِ بْنِ عُبَيْدَةَ، عَنْ أَبِي عَبْدِ الرَّحْمَنِ قَالَ: خَطَبَ عَلِيٌّ فَقَالَ: يَا أَيُّهَا النَّاسُ أَقِيمُوا عَلَى أَرِقَّائِكُمُ الْحَدَّ، مَنْ أَحْصَنَ مِنْهُمْ وَمَنْ لَمْ يُحْصِنْ. فَإِنَّ أَمَةً لِرَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ زَنَتْ، فَأَمَرَنِي أَنْ أَجْلِدَهَا. فَإِذَا هِيَ حَدِيثُ عَهْدٍ بِنِفَاسٍ، فَخَشِيتُ إِنْ أَنَا جَلَدْتُهَا أَنْ أَقْتُلَهَا. فَذَكَرْتُ ذَلِكَ لِلنَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «أَحْسَنْتَ».

[3892–000]. (Dar al-Salam 4225) Isḥāq ibn Ibrāhīm narrated: Yaḥyā ibn Adam reported; Isrā'īl narrated; from al-Suddī; with the same chain of transmission: **the same text but did not mention,**

‘whether married or unmarried’. He added in the hadith: ‘Leave her until she has regained health’.

وَحَدَّثَنَاهُ إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أَخْبَرَنَا يَحْيَى بْنُ آدَمَ، حَدَّثَنَا إِسْرَائِيلُ، عَنِ السُّدِّيِّ، بِهَذَا الإِسْنَادِ: وَلَمْ يَذْكُرْ: مَنْ أَحْصَنَ مِنْهُمْ وَمَنْ لَمْ يُحْصِنْ. وَزَادَ فِي الْحَدِيثِ: «اتْرُكْهَا حَتَّى تَمَاثَلَ».

Text Explanation

Hadith No. 3889 in the previous chapter says: ‘God’s Messenger (peace be upon him) was asked about an unmarried slave woman who commits adultery. He said: “If she commits adultery, flog her’. In hadith No. 3891, ʿAlī says in his address: ‘People, enforce the mandatory punishment on your slaves, whether married or unmarried’. Al-Ṭaḥāwī said that none of the narrators mentioned the words, ‘whether married or unmarried’, except Mālik, suggesting that it lacks authenticity. Masters of Hadith disagree with al-Ṭaḥāwī, stating that Ibn ʿUyaynah also mentioned it, as did Yaḥyā ibn Saʿīd from Ibn Shihāb. Both narrated the same as Mālik, which means that this phrase is correct and authentic. It does not express any different ruling, because a slave woman is given half the penalty of a free woman, whether she is married or not.

This hadith explains the case of unmarried slaves, while the case of married ones is explained in the Qur’anic verse that says: ‘If after their marriage, they are guilty of gross immoral conduct, they shall be liable to half the penalty to which free women are liable’. (4: 25) The verse and the hadith together make clear that a slave woman who commits adultery is punished by flogging, whether she is married or unmarried. This is exactly the meaning of what ʿAlī said in his address.

It may be asked: why does the Qur’anic verse say: ‘If after their marriage’, when she incurs half the amount of flogging given to a free

woman guilty of the same, whether the slave is married or not? In answer we say that the verse states that although she may be married, a slave woman who commits adultery incurs only half the flogging punishment of a free woman, because this is the punishment that can be halved. The stoning punishment cannot be halved. Hence, the verse does not refer to it. Thus a married slave woman does not have the same ruling as a free married woman. The verse makes this clear so that no one imagines that a married slave woman may be stoned. It is unanimously agreed that she is not stoned. An unmarried slave adulterer incurs half the flogging of a married slave adulterer. This is clear in authentic hadiths, including this one narrated by Mālik. This is confirmed in other hadiths with general expressions, such as: 'If a slave woman of any of you commits adultery, he should flog her'. This applies to whether she is married or unmarried.

What we have mentioned of half the flogging punishment applicable to a slave adulterer whether she is married or not is the view of al-Shāfiʿī, Mālik, Abu Ḥanīfah, Ahmad and the great majority of scholars. A number of early scholars said that no mandatory punishment applies to unmarried slave adulterers, whether male or female. Such scholars include Ibn ʿAbbās, Ṭāwūs, ʿAṭā', Ibn Jurayj and Abu ʿUbaydah.

The hadith in this chapter makes clear that the flogging punishment is applicable to a slave woman who commits adultery, and that this punishment is delayed in the case of a woman who has recently given birth, or is sick, or similarly weak. It is delayed until they have regained health, but God knows best.

i. Related by al-Tirmidhī, 144.

Since its compilation over a thousand years ago, *Ṣaḥīḥ Muslim* has been recognised by scholars as an authentic collection of Prophetic teachings second only to that of Imam Bukhārī (d. 256/870). The hadith collection of Imam Muslim (d. 261/875) has had innumerable commentaries written on it down to modern times. However, there is no doubt that one commentary stands out as the most authoritative, namely that of the great Damascene scholar, Imam al-Nawawī (d. 676/1277), which in Arabic is entitled *al-Minhāj Sharḥ Ṣaḥīḥ Muslim ibn al-Ḥajjāj*. This multidisciplinary commentary brings forth rich insights into the Arabic language, Qur'anic studies, Islamic law and jurisprudence, Islamic theology, Islamic spirituality and Islamic history.

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